This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

U. S. Congress.
House. Committee
on Interstate and
Foreign Commerce

The Texas &
Pacific Railway
Co. Charter.
Hearing

WAP
T355
U579

BAKER LIBRARY

Digitized by Google

HARVARD UNIVERSITY
GRADUATE SCHOOL
OF BUSINESS
ADMINISTRATION
BAKER LIBRARY

Digitized by Google

THE TEXAS & PACIFIC RAILWAY CO. CHARTER

HEARING

BEFORE THE

U. S. Congress House

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

FOURTH SESSION

ON

H. R. 13476

AMENDATORY OF AND SUPPLEMENTAL TO AN ACT ENTITLED "AN ACT TO INCORPORATE THE TEXAS PACIFIC RAILROAD COMPANY, AND TO AID IN THE COMSTRUCTION OF ITS ROAD, AND FOR OTHER PURPOSES" APPROVED MARCH 3, 1871, AND ACTS SUPPLEMENTAL THERETO APPROVED, RESPECTIVELY, MAY 2, 1872, MARCH 3, 1873 AND JUNE 22, 1874

WASHINGTON
GOVERNMENT PRINTING OFFICE
1922

25319

Digitized by Google

WAP
T355
11579

OCT 10 1963

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

SIXTY-SEVENTH CONGRESS, FOURTH SESSION.

HOUSE OF REPRESENTATIVES.

SAMUEL E. WINSLOW, Massachusetts, *Chairman.*

JAMES S. PARKER, New York.
BURTON E. SWEET, Iowa.
WALTER R. STINESS, Rhode Island.
JOHN G. COOPER, Ohio.
EDWARD E. DENISON, Illinois.
EVERETT SANDERS, Indiana.
SCHUYLER MERRITT, Connecticut.
J. STANLEY WEBSTER, Washington.
EVAN J. JONES, Pennsylvania.
CARL E. MAPES, Michigan.
WILLIAM J. GRAHAM, Illinois.
SHERMAN E. BURROUGHS, New Hampshire.
WALTER H. NEWTON, Minnesota.
HOMER HOCH, Kansas.

ALBEN W. BARKLEY, Kentucky.
SAM RAYBURN, Texas.
GEORGE HUDDLESTON, Alabama.
CLARENCE F. LEA, California.
PAUL B. JOHNSON, Mississippi.
HARRY B. HAWES, Missouri.

ELTON J. LAYTON, *Clerk.*
ROBERT B. BENNETT, *Assistant Clerk.*

U.S.A.C.C.

Digitized by Google

CONTENTS.

Statements of:	Page.
Sumners, Hon. Hatton W	3
Freeman, Judge Thos. J	4
de Gersdorff, Mr. C. A	24

Digitized by Google

Digitized by Google

THE TEXAS & PACIFIC RAILWAY CO. CHARTER.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Wednesday December 20, 1922.

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman), presiding.

There were present before the committee Hon. Hatton W. Sumners, a Representative in Congress from the State of Texas; Mr. Thomas J. Freeman, general counsel Texas & Pacific Railway Co.; and Mr. C. A. de Gersdorff, 52 William Street, New York City, counsel for bondholders of the Texas & Pacific Railway Co.

The CHAIRMAN. Gentlemen, the bill before us to-day—or which was supposed to come before us to-day—was H. R. 13005, introduced by Mr. Sumners, affecting the Texas & Pacific Railway Co. After a little study of the subject matter and a conference with the Interstate Commerce Commission, who wrote quite in detail with reference to suggestions on the bill, the Chair has been advised that Mr. Sumners thought it better to prepare a second bill, which appears in the form of H. R. 13476. The second bill embodies, with the exception of three or four or half a dozen words, which perhaps were misprinted by error of the typesetter, all the recommendations, corrections, and suggestions of the Interstate Commerce Commission. The differences are very few. Mr. Sumners, if I am not quite in accordance with the facts, you will kindly correct me. So it seems best to the Chair to pick up the later bill, which I understand is the desire of Mr. Sumners, and consider it rather than the first bill. Is that correct?

Mr. SUMNERS. Yes, sir.

(The bill referred to follows:)

[H. R. 13476, Sixty-seventh Congress, fourth session.]

A BILL Amendatory of and supplemental to an act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3, 1871, and acts supplemental thereto, approved, respectively, May 2, 1872, March 3, 1873, and June 22, 1874.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in addition to the powers conferred upon or secured to the Texas and Pacific Railway Company by the act of Congress under which it is incorporated and the supplements thereto, said railway company, in order to extend and develop the lines of railroad now owned by it and situated in the States of Texas, Louisiana, and Arkansas, the main lines whereof extend from Texarkana, Texas, westwardly by way of Whitesboro to Fort Worth, Texas, and from Texarkana, Texas, southerly to Marshall, Texas, and thence westwardly by way of Dallas, Texas, to Fort Worth, Texas, and from Fort Worth, Texas, westwardly to Sierra Blanca, Texas, and from Texarkana, Texas, and Marshall, Texas, southerly and easterly, respectively, to Shreveport, Louisiana, and from Shreveport, Louisiana, southeasterly to New Orleans, Louisiana, all of which lines are now owned and operated by it under the name of the Texas and Pacific Railway Company, and also the line between Sierra Blanca, Texas, and El Paso, Texas, over which the Texas and Pacific Railway Company operates pursuant to an agreement with the Galveston, Harrisburg and San Antonio Railway Company, and branch lines now owned and operated by the said the Texas and Pacific Rail-

Digitized by Google

way Company, being hereby designated and declared to be lines of railroad of the Texas and Pacific Railway Company, shall have power from time to time to lay out, locate, construct, furnish, maintain, operate, purchase or lease, and enjoy railroads constituting extensions or branches of its said lines of railroad.

SEC. 2. That said lines of railroad, including all branches and extensions heretofore constructed or acquired, or which may be constructed or acquired as aforesaid, shall be deemed and taken to be a part of the Texas and Pacific Railway Company and of its line of road, and of its prescribed route, for the purposes and within the meaning of and subject to all the provisions and limitations of the Act of Congress incorporating said company and of the supplements thereto.

SEC. 3. That in addition to the powers conferred by section 2 of the act entitled "An act supplementary to an act entitled 'An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its roads, and for other purposes,' approved March 3, 1871," approved May 2, 1872; the Texas and Pacific Railway Company shall have power and authority at any time, or from time to time, by resolution of its board of directors, duly adopted adopted at a meeting thereof held in accordance with its by-laws, and with the consent of the holders of a majority in amount of its then outstanding capital stock, expressed by vote in person or by proxy at a special meeting of said stockholders called for the purpose upon such notice as its by-laws require for the calling of such special meeting, to authorize an issue or issues of its bonds for the completion, equipment, maintenance, or repair of its lines of railroad, the funding of any debt, the making of any additions, extensions, or betterments to its property, or for any other lawful corporate purpose, without limitation in amount to $40,000 per mile of its lines of railroad as prescribed by said act of Congress approved May 2, 1872, and to secure said bonds, or any of them, by mortgage or other lien upon all or any portion of its franchises and property.

SEC. 4. That the capital stock of the Texas and Pacific Railway Company heretofore fixed by its board of directors pursuant to the provisions of said act of Congress approved March 3, 1871, at $50,000,000 may be increased at any time, or from time to time, by resolution of its board of directors, duly adopted at a meeting thereof held in accordance with its by-laws, and with the consent of the holders of a majority in amount of its then outstanding capital stock, expressed by vote in person or by proxy at a meeting of said stockholders called for the purpose upon such notice as its by-laws require for the calling of such special meeting.

Any additional share of capital stock so authorized shall be entitled to such rights, privileges, and priorities, and preferences and be subject to such limitations and restrictions as may be determined by resolution of the board of directors with like consent of the holders of majority in amount of the then outstanding capital stock of the Texas and Pacific Railway Company: *Provided*, That each share of outstanding capital stock, preferred or common, shall be entitled to one vote at every stockholders' meeting, which may be voted in person or by written proxy.

SEC. 5. That all power and authority granted by this act, or by any of the aforesaid acts, shall be subject in its exercise to the provisions of the interstate commerce act, or any act amendatory thereof or supplemental thereto from time to time in force, so far as practicable.

SEC. 6. That a copy of the resolution of the board of directors and of the stockholders, or of the proceedings at a stockholders' meeting, authorizing any such increase in capital stock, or the issuance of any such bonds, and of the order of the Interstate Commerce Commission or other governmental agency authorizing the same, certified by the secretary of the Texas and Pacific Railway Company, shall be filed and recorded in the Department of the Interior, and when so filed shall be sufficient evidence of the power and authority of the Texas and Pacific Railway Company to issue such additional stock or bonds.

SEC. 7. That the Texas and Pacific Railway Company, for the purposes of all actions at law by or against it, real, personal, or mixed, and all suits in equity shall be deemed a citizen of the State of Texas and an inhabitant of the county of Dallas, in said State.

The CHAIRMAN. The Chair will now ask Mr. Summers if he will kindly make a statement in reference to the bill.

Digitized by Google

STATEMENT OF HON. HATTON W. SUMNERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS.

Mr. SUMNERS. Mr. Chairman and gentlemen of the committee, I will make a very brief statement with regard to this bill.

The proposed legislation was presented to the Senate by Senator Sheppard, who introduced the bill on November 21. On November 24 the same bill was introduced in the House, and as the chairman has stated, after the original House bill was submitted to the Interstate Commerce Commission to receive its criticism, a new bill was introduced, in which it was sought to conform to suggestions of the Interstate Commerce Commission.

The Texas & Pacific Railway Co., the railway company dealt with in the bill, as you gentlemen know—at least I so understand and I am sure you know—is the only railway company in the United States operating under a Federal charter.

This railway company is now in the hands of a receiver. Judge Freeman, at the table, is the general counsel for the receiver, and as soon as I shall have concluded my very brief statement he will be at your service to give to the committee any information which you may desire with reference to the condition of this road, the proposed legislation and the necessities therefor; and in view of the fact that the members of this committee are experts with regard to matters concerning transportation, and Judge Freeman is here more fully advised with regard to the facts than I am, and since as a member of a committee I have been frequently imposed on myself by people who wanted much to talk and had very little to say—or know very little—unless you gentlemen desire to ask me some questions I will now introduce to the committee Judge Freeman, who is the general counsel for the receiver and is better prepared than I could possibly be to give to the gentlemen of the committee what information they may desire with reference to this proposed legislation.

Mr. HUDDLESTON. Mr. Chairman, I would like to ask Mr. Sumners a question. Who wanted this bill passed, Mr. Sumners?

Mr. SUMNERS. I assume that it may be stated that, of course, the managers, and as I understand it, the owners of the railway company itself in the first instance desire it. It is represented by those who do represent the owners and who in this instance represent the receiver, that if the bill is passed they can improve their property and bring it into that stage of repair under which it could render more efficient service to the public than it can now, and from that angle I think it would be the truth to say that the people along the lines that are served by this railway company would like to have it done, if the premise is sound that the enactment of this legislation would enable this railway company to get more capital at a cheaper rate of interest, and that is the interest that I have in the proposed bill.

Mr. HUDDLESTON. What information has been given to the people that are served by the road or by the officials of the States in which it does business, as to the pendency of this bill?

Mr. SUMNERS. I am not advised as to what information has been given to the people of my district, for instance, at all, nor am I advised as to what information has been given to the people of the other districts and other sections of the country through which this railway company's lines operate. In this particular case, with regard to my own constituents, I have assumed the responsibility of using my judgment and acting for them in the premises.

Mr. HUDDLESTON. Have the public officials of the States concerned been informed of this bill?

Mr. SUMNERS. I am not advised about that.

Mr. HUDDLESTON. My questions were directed to finding out whether there might be opposition to the bill and what opportunity the opposition had to meet here.

Mr. GRAHAM. Has the Interstate Commerce Commission, Mr. Sumners, been in any way advised about the pendency of this bill?

Mr. SUMNERS. Yes; the bill has been submitted to them. I think the question is a very pertinent one that Mr. Huddleston has asked with regard to the officials of Texas, for instance. I am sure they know of the pendency of this proposed bill, because they keep matters of that sort in mind; in fact, it has attracted a greal deal of notice in the press of Texas, and so far as I am concerned I have not received any protests from any member of the State

Digitized by Google

government, any official of the State government of Texas, with regard to the proposed legislation.

The CHAIRMAN. Mr. Graham, the Chair stated before you came in that the bill before us was introduced by Mr. Sumners after receiving the benefit of the letter from the Interstate Commerce Commission, and has been made up in accordance with their suggestions, which appeared to be agreeable to him as the introducer of the bill, and it will all appear in the record, the statement about that.

Mr. SUMNERS. I do not know whether Mr. Huddleston was here when I began my brief statement or not.

Mr. HUDDLESTON. Yes; I have been here for some time waiting for the hearing to start before it actually did start.

Mr. SUMNERS. This bill was first introduced in the Senate by Senator Sheppard, and as a matter of fact I reintroduced the bill in the House here, just as he introduced it there.

The CHAIRMAN. Are there any other questions, gentlemen? If not, we are much obliged to you, Mr. Sumners.

We will now hear Mr. Freeman.

STATEMENT OF MR. THOMAS J. FREEMAN, 1014 WHITNEY BANK, NEW ORLEANS, LA., GENERAL COUNSEL OF THE TEXAS & PACIFIC RAILWAY CO.

Mr. FREEMAN. Mr. Chairman and gentlemen, I appear as general counsel of the Texas & Pacific Railway Co. The Texas & Pacific Ry. Co., as stated by Mr. Sumners, was chartered and incorporated under an act of Congress in March, 1871. During its period of incorporation it has appeared before Congress in three other instances besides this one, and obtained amendments from Congress. Any amendment that the Texas & Pacific Railway Co. obtains to its charter must be obtained through Congress, its parent. In other words, we can obtain no State legislation that will be of any benefit to us or that would be constitutional. We must come to Congress to obtain any benefit in the way of amendments.

Mr. GRAHAM. Have you a copy of the original act?

Mr. FREEMAN. I have a copy of the original charter. I have a printed copy here of the original charter and all the amendments. This is in pamphlet form. You will find the original charter here.

Mr. GRAHAM. Mr. Chairman, I wonder if the judge has enough of those for the members of the committee.

Mr. FREEMAN. I will have enough. I do not have them here, but I will have enough to give the members of the committee later on.

The original charter was approved March 3, 1871, and it is Chapter CXXII, Forty-first Congress, session 3, volume 16, United States Statutes at Large, page 573. That is the original charter.

The original charter of the Texas & Pacific Railway Co. authorized the company to construct a line from Marshal, Tex.—and Marshal, Tex., is about 67 miles from Texarkana, Tex., or Texarkana, Ark. The line was to be constructed from Marshal, Tex., in a westerly direction to San Diego, Calif. It commenced its construction. It was delayed very considerably by the financial panic of 1873, and the difficulty in getting money, but it commenced construction shortly after its incorporation, building west from Marshal toward El Paso.

In 1870, prior to the incorporation of the Texas & Pacific Railway Co., the State of Texas, desiring a line traversing the State from east to west, authorized the incorporation of what was known in the old days as the Southern Pacific Railroad Co., a Texas corporation—no connection, however, with the present Southern Pacific corporation at all.

The State of Texas also, prior to 1870, authorized the incorporation of a railroad called the Southern Trans-Continental Railroad. Both of those lines were incorporated for the purpose of building lines of road through the State of Texas from the Arkansas line to El Paso on the Rio Grande River.

Both of those lines between 1870 and 1871 had fallen down on their project in the matter of constructing their lines of road. The Southern Pacific had constructed about 66 miles of its road from Marshall, Tex.—that was the eastern termini of the Texas Pacific—to Texarkana, Tex., or the Arkansas line. The Southern Trans-Continental Railroad had constructed only a few miles of its road between Texarkana, heading toward Fort Smith by Whitesboro, Sherman,

Digitized by Google

and Paris, and that line is what we call the transcontinental division of our road.

Mr. MERRITT. You haven't got the map of that, have you?

Mr. FREEMAN. I will have a map in our report which evidences that.

Mr. MERRITT. My geographical ideas are a little hazy about this.

Mr. FREEMAN. I could illustrate that really with these papers as much as anything else. Marshall, Tex., was our extreme eastern termini, which was here [indicating]. The Southern Pacific road, after it was incorporated, built from Marshall still earlier down to the Arkansas line at Texarkana here. Then it stopped. The Southern Trans-Continental built from Texarkana, Tex.—or, rather, its line of road went from Texarkana, Tex.—around here [indicating], and then to Fort Worth, Tex.

The main line of the Texas & Pacific from Marshall to Fort Worth is this line.

In other words, we have a rectangle in connection with the main line of the Texas Pacific, the line of the Southern Pacific to Texarkana, and then the line of the Trans-Continental back to Fort Worth, and we have a rectangle 243 miles on one side and 247 miles on the other.

After the Texas & Pacific acquired the Southern Pacific line in Texas, and the Southern Trans-Continental line in Texas, it proceeded then to construct its lines from Marshall west to El Paso, and then from Texarkana west to Fort Worth, there connecting with the main line going out to El Paso.

The acquisition of the Southern Pacific line and the Southern Trans-Continental line was obtained by due legislative authority from the State of Texas and by due corporate authority on the part of the corporation.

In 1874, after the Texas & Pacific had acquired the Southern Trans-Continental line and the Southern Pacific line, it made application to Congress for legislation, and in June, 1874, Congress passed an act which will be found in volume 18, United States Statutes at Large, page 197. That act expressly recognizes the purchase by the Texas & Pacific of the Southern Trans-Continental and the Southern Pacific line, and merges those lines into the Texas & Pacific as part of the Texas & Pacific to be operated and controlled under the Texas & Pacific Railway charter. The following language occurs in this act: "And which roads, so merged, as aforesaid, shall, for that and all other purposes, be deemed and taken to be a part of the said Texas & Pacific Railway, and shall hereafter be subject to all the provisions and limitations of the act of Congress incorporating such company, and of the supplements thereto."

Under the charter of the Southern Trans-Continental Railway Co. and the Southern Pacific Co., those roads have the right to construct and build lines of railway connecting the Atlantic with the Pacific Ocean. By reading the Texas & Pacific charter, you will notice that it was the intention of Congress originally that the Texas & Pacific Railway Co. should connect with some line at Shreveport, La.—the line was mentioned in the twenty-second section of our charter as the New Orleans, Baton Rouge & Vicksburg—that we should connect with the line at Shreveport, La., so as to form a through connection from Shreveport, or from Texas to New Orleans, La., on the Mississippi River, and our charter was amended in 1872, directing that we should build and extend our line to Shreveport, La.

After we had acquired the Southern Trans-Continental and the Southern Pacific, under that charter provisions which authorized them to build a line of road from the Atlantic to the Pacific, we built it down to Shreveport, La.

The old Baton Rouge road mentioned in section 22 of our charter was only incorporated and the line located on the map, and that map filed with the land department of the United States Government, the purpose of that being to obtain certain land-grant rights—Federal land-grants rights in the State of Louisiana. As I say, the old Baton Rouge company never stuck a spade in the ground in the matter of building a railroad.

Subsequently, however, the old Baton Rouge company sold all of its rights, franchises, and interest and land grants to the New Orleans & Pacific Co., a line incorporated to operate a railroad between New Orleans and Shreveport. The United States Government, through its Land Department and by Congressional action, ratified and approved the purchase by the New Orleans & Pacific of all the Baton Rouge Co.'s interest. The New Orleans-Pacific located its line, mapped its line, and actually builded the line from New Orleans to Shreveport, and obtained the land grants that would have been obtained by the Baton Rouge company.

Digitized by Google

Subsequently, after we had built our connection into Shreveport, the Texas & Pacific bought all of the railroad properties, franchises, and rights of the New Orleans & Pacific Railway Co., but not its land-grant rights. In other words, we obtained no land grants from them at all; we merely bought their railroad in order to carry out the former intention of Congress that we should have a line connecting the Mississippi River with Texas and with the West. That was in 1881.

The purchase of the Southern Trans-Continental and the Southern Pacific lines was specifically ratified by Congress in 1874. That ratification was before the actual physical lines had been laid. We have never been before Congress since 1874, except upon this occasion, as to amending our charter, and for that reason in this bill we have described as part of the Texas & Pacific road the line of the New Orleans & Pacific road which was obtained in 1881, after we obtained the charter of the Southern Pacific and the Southern Trans-Continental. Since 1881, the New Orleans & Pacific Railway Co. has been merged in and become a part of the Texas & Pacific Railway Co., and has been operated openly and notoriously as a part of the Texas & Pacific Railway Co. The Texas & Pacific line at this time, the main line, commences at New Orleans, goes to Marshal, Tex., and from Marshal to El Paso, then from Marshal down to Texarkana, under the old Southern Pacific line; from Texarkana to Fort Worth, the old transcontinental, and there it meets the main line again and goes to El Paso.

The Texas & Pacific Railway Co. has never gone through a real reorganization by which it could raise funds what possibly every trunk line in the United States has gone through since 1871 or prior thereto.

Mr. NEWTON. Then you do not get outside of Texas at all, so far as the West is concerned?

Mr. FREEMAN. Only to El Paso. There we connect with the Southern Pacific of California. It was the intention of Congress to have the through line, but financial conditions crimped us in getting to El Paso as soon as we should. In the meantime, while we were wrestling with adverse financial conditions in 1870, 1871, 1872, and 1873, the Southern Pacific Co. having better financial connection than we had, and built from San Diego and San Francisco down to El Paso. In other words, they beat us to it. When we got to El Paso we made a running connection with them from Sierra Blanca, just out of El Paso, into El Paso. So the Government really has a through line of the Texas Pacific and Southern Pacific, but we did not build beyond El Paso because the Southern Pacific had already covered that territory before we could get there.

Mr. NEWTON. Does the Southern Pacific from El Paso east parallel your line?

Mr. FREEMAN. No, sir; it does not parallel. The Southern Pacific runs southeast—we run directly west in Texas, you might say, from Texarkana to El Paso, right through the State east and west. The Southern Pacific at El Paso comes a little south of east, like that [indicating]. It is not a competitor with us at all as to our local territory, but is our through connection to California and San Diego and other California points from El Paso.

Mr. NEWTON. Have they any connection with your road and control of the stock?

Mr. FREEMAN. On the contrary we are highly competitive for the California business. We have no stock connection, no physical connection, and no other connection except that of connecting lines of railroad. We use 90 miles of the Southern Pacific track between Sierra Blanca and El Paso. That grew out of this fact, that the Texas & Pacific constructed its dump from Sierra Blanca into El Paso, but before we laid our rails, the Southern Pacific in the meantime—when we use the word "Southern Pacific" that is a misnomer in Texas, because it ought to be the G., H. & S. A.—but the Southern Pacific in the meantime had constructed its line from Houston, Tex., up to this point near Sierra Blanca, but nearer to the Rio Grande River, and one of those cloudbursts came along and the river completely destroyed the dump for their track. We had constructed our dump where we connected with them at Sierra Blanca, so they took our right of way, and we made a trackage-operating arrangement between Sierra Blanca and El Paso, providing tht we would go in over their rails with equal rights with the Southern Pacific into El Paso, but we have no connection, no financial or business connnection with them at all. We are highly competitive in every particular.

Mr. GRAHAM. Let me ask you a question. How does it happen that you had a Federal charter?

Digitized by Google

Mr. FREEMAN. Prior to the war between the States, the United States Government was very desirous of obtaining what they called "transcontinental lines" connecting the Atlantic with the Pacific—that is, California, you might say, with New York, to use general terms—a line, of course, was badly needed, because all traffic in those days was by the prairie schooner overland. In pursuance of the desire upon the part of the Government to have these transcontinental lines it incorporated the Union Pacific Railroad and the Northern Pacific Railroad and the Central Pacific of California. Those lines were incorporated under Federal charters for the purpose of building transcontinental lines connecting the Atlantic with the Pacific Ocean, and those roads were constructed but not until long after the war, because financial conditions intervened and prevented them being completed until after the war.

The Government found it very necessary or very desirable that they should have a southern transcontinental route. They had the northern one but there was not any southern transcontinental route connecting the Atlantic with the Pacific. In other words, there was no east and west line through Texas at all, so in pursuance of that policy they incorporated the Texas & Pacific Railway Co. to be a link in this southern transcontinental route from the Atlantic to the Pacific, connecting with lines coming down from St. Louis into that territory, which already had lines going from St. Louis to the west lines built down to Texarkana, and the Texas Pacific then would build from Marshal in connection with this Southern Pacific to El Paso, and if it had had the money it would have gone on to San Diego, but the purpose was to have a southern transcontinental line of railroad so as to supplement the northern transcontinental line that the Government had authorized.

Mr. NEWTON. I observe in the act that they granted alternate sections of land. I suppose the route of that road was pretty nearly or entirely through Government land at that time.

Mr. FREEMAN. No; the Texas & Pacific never obtained any Government lands at all, as it did not build in California, Arizona, or New Mexico.

Mr. NEWTON. Well, there is a grant in the charter of alternate sections.

Mr. FREEMAN. Alternate sections in California and Arizona, but as we did not leave Texas, of course, we got none of those lands at all. The Southern Pacific built in there and they got lands, but we did not get them. We were authorized to get them, but we did not get them.

Mr. NEWTON. Also there was a grant of land in Louisiana.

Mr. FREEMAN. That is the Baton Rouge company. We did not get any of theirs. The Baton Rouge company did not carry out its obligation, but filed a location of its railway, which automatically withdrew the lands from actual settlement. Subsequently, as I said, the New Orleans & Pacific obtained by contract from the Baton Rouge company all of its rights, and land-grant rights, and actually builded the road and actually got the land-grant rights, but when we bought the New Orleans & Pacific, the land-grant rights were excepted from our contract and we did not get them.

Mr. NEWTON. Let me see if I have it right now. The Northern Pacific, the Union Pacific, and your road—was there any other that had Federal charters?

Mr. FREEMAN. I do not know of any others unless it was the Central Pacific. I am inclined to think the Central Pacific, which was the connection with the Union Pacific at Omaha, may have had a Federal charter. I am not sure. Those three lines had Federal charters, but their Federal charters were granted long prior to that of the Texas Pacific.

Mr. NEWTON. I think the Union Pacific and the Northern Pacific were granted about 1864, during the Civil War.

Mr. FREEMAN. Yes; during the Civil War.

Mr. NEWTON. You spoke a moment ago about the Great Northern having a Federal charter in this book, did you not?

Mr. FREEMAN. The Northern Pacific.

Mr. NEWTON. Jim Hill always made the boast, I know, that he never received a single acre of land from the Government.

Mr. FREEMAN. It was the Northern Pacific.

Mr. HUDDLESTON. The statement of Mr. Sumners was incorrect, then, that your road was the only road operated under a Federal charter.

Mr. FREEMAN. No; that is correct because of the fact that the other lines have gone through processes of reorganization and foreclosures, and have lost their Federal charters.

Mr. NEWTON. So that the present systems going under those names are not owned by the original companies under charters by Congress?

Digitized by Google

Mr. FREEMAN. No; they are not. They are operated now under State charters. So as a matter of fact, the Texas & Pacific is the only Federal incorporated railroad operating under a Federal charter.

Mr. HUDDLESTON. May I ask you at some time in your remarks to discuss why your road should not do the same thing?

Mr. FREEMAN. Well, there is just this reason: We operate a short distance in Arkansas and through Louisiana and Texas. We have a rather peculiar condition down in our territory. The State of Louisiana is liberal in the matter of charter powers and charter rights to railroads—very liberal. We could obtain a charter from the State of Louisiana to do business in the State of Texas, but the State of Texas prohibits a railroad corporation chartered under the laws of any other State from doing business in Texas. Now, we could obtain a charter from the State of Texas, but the laws of the State of Texas do not permit a railroad company to be incorporated to do business outside of the State of Texas.

Mr. HUDDLESTON. It is sometimes done by various systems to have several different companies chartered by the several States in which they have property?

Mr. FREEMAN. Yes; that condition is forced on them, so that they have to maintain independent offices in all of the States, but when you come to issue securities in a situation of that sort you would have three different States and three different authorities. You could no issue a blanket mortgage. You would have what we would call division-line mortgages, a mortgage on the Louisiana division, for instance, and one on the Texas division and one on the Arkansas division, because those roads would have no right to issue a blanket mortgage covering all the divisions, because under the State charters that could not be done. The result would be that your securities would be very much depreciated and you would have the double expense or the triple expense of maintaining three sets of general offices, when one general office would perform the same functions and better.

Mr. HUDDLESTON. Did I understand you correctly to say that the laws of Texas do not permit railroad corporations incorporated by other States to operate in that State?

Mr. FREEMAN. Yes, sir.

Mr. HUDDLESTON. And there are none such?

Mr. FREEMAN. No; they are all operated independently.

Mr. HUDDLESTON. Each of these systems, we will say, such as the Southern Pacific, has a separate corporation to operate its sections?

Mr. FREEMAN. The Southern Pacific by that name does not operate in Texas at all; it operates through a Texas corporation, the Galveston, Harrisburg & San Antonio. Then when it goes out of Texas, crosses the Arizona line out of El Paso, it there meets what is known as the Southern Pacific of California, and goes on through under that name.

Mr. HUDDLESTON. Of course, there are a great many systems that operate both in Texas and out of Texas, are there not, such as the Frisco?

Mr. FREEMAN. I will illustrate it. Take the St. Louis and Southwestern, the Cotton Belt, as we call it. The St. Louis & Southwestern operates down to the Texas line; it then has taken out an independent charter for the St. Louis & Southwestern of Texas. It maintains two systems. The Gulf, Colorado & Santa Fe is strictly a Texas line, operates in Texas until it strikes the border; then it becomes the Atchison, Topeka & Santa Fe, but they have to operate separate entities, entirely separate organizations.

The M., K. and T. of Arkansas operates down the Red River—the M., K. and T. of Kansas, I should say, operates down the Red River; there it strikes the M., K. and T. of Texas, and a separate organization comes into existence. The Frisco proper operates down to the Red River at Denison and to Paris, Tex.—that is in the Indian Territory line across from Paris—there it becomes the St. Louis & San Francisco of Texas, a separate entity and a separate organization.

Mr. RAYBURN. It is true, is it not, that every railroad that operates in Texas must operate under a Texas charter?

Mr. FREEMAN. It must operate under a Texas charter with independent Texas offices, and the State of Texas does not authorize the incorporation of a railroad in Texas that may operate in any other State.

Mr. HUDDLESTON. Now, am I fair in saying, then, that it is the purpose of obtaining this Federal charter to enable you to do things in Texas which the

Digitized by Google

laws of the State of Texas would not permit you to do, and which no other railroad is permitted to do?

Mr. FREEMAN. No; that is not the purpose, because we can do nothing in Texas that other railroads can not do. The only thing is we can issue a blanket mortgage covering our entire line, and a railroad in Texas could not do that; it would have to have separate mortgages in separate States.

Mr. HUDDLESTON. You would enjoy, by virtue of holding this Federal charter, privileges which no other Texas railroad has?

Mr. FREEMAN. Only the privilege of issuing a blanket mortgage instead of having a mortgage in three separate States. The United States Supreme Court held in the case of the Texas & Pacific that we are amenable to all of the laws of the State of Texas, to all the rates, rules, and regulations of the Railway Commission of Texas, to all of the police powers of the State of Texas, and to all of the taxing powers upon our property, but when it comes to issuing securities we would not be amenable to the laws of the State of Texas because that is the exercise of a franchise and that must be obtained through Congress. To that extent we are different from the other lines in Texas.

Mr. HUDDLESTON. There is another line of questions that I want to ask, but I do not believe I will interrupt the thread of your discussion now.

Mr. FREEMAN. It is perfectly agreeable to me.

The CHAIRMAN. The gentleman indicates a willingness to be interrupted, if you desire to do so.

Mr. HUDDLESTON. I want to ask something about the receivership. Who is the receiver?

Mr. FREEMAN. The Texas & Pacific Railroad Co. went into the hands of receivers in October, 1916. They had become default upon some notes that had been given several years before, amounting to several million dollars. The receivers of the Texas Pacific Co., the original receivers, were J. A. Lancaster and Pearl Wight, of New Orleans. Mr. Wight died and Mr. Lancaster went with the Government during Federal control and was subsequently appointed receiver in connection with Charles L. Wallace. The receivers of the Texas-Pacific road at this time are Charles L. Wallace and J. L. Lancaster.

Mr. HUDDLESTON. Has the Interstate Commerce Commission announced the valuation on the properties of the Texas & Pacific?

Mr. FREEMAN. No; the Interstate Commerce Commission has only handed down tentative valuations upon certain portions or classes of property, land, and right of way. Those matters will possibly come up within the next six months with us for a formal hearing upon their reports.

Mr. HUDDLESTON. What are the total obligations, the debts of the Texas & Pacific Railway Co.?

Mr. FREEMAN. You mean the bonded debts?

Mr. HUDDLESTON. I mean all its obligations.

Mr. FREEMAN. Since the receivership of the Texas-Pacific in 1916, with the exception of these notes upon which the receivership was based, which amount now to approximately $4,000,000, it has practically wiped out all of its indebtedness—I mean the corporation debts proper.

Mr. HUDDLESTON. What is the floating debt?

Mr. FREEMAN. The road, or corporate indebtedness, you would call it, is negligible in the sense that we have paid practically everything that has been passed for voucher and finally ascertained to be a debt. I do not suppose the entire indebtedness of the Texas & Pacific corporation, outside of these $4,000,000 in notes, would amount to $50,000 or $100,000, and the only reason that has not been paid is the fact that it has not been put in a form to be paid; it has not been finally determined to be a debt.

Mr. HUDDLESTON. Now this $4,000,000 is what class of debt?

Mr. FREEMAN. That is a promissory note.

Mr. HUDDLESTON. That does not, of course, include the bonded indebtedness?

Mr. FREEMAN. No; that is the general indebtedness. The bonded indebtedness of the Texas & Pacific Railway is the first mortgage bond, $25,000,000; the branch line bonds on the branch lines in Louisiana, using round figures, $5,000,000—say $30,000,000. Interest on these two classes of bonds is fixed and is 5%.

We have another bond of $25,000,000 called income bond or second mortgage bond. That interest is payable only when earned and declared to be applicable to interest by the board of directors. Those bonds were all put out in 1887. During that time about eight years' interest has been paid on these income bonds, and then not the full interest, 1½, 3, and then 5 cents.

Digitized by Google

No interest has been paid on these income bonds now for more than 14 years, and that interest does not accumulate at all. In other words, it is not payable if not paid the year that it is supposed to be earned, so we have been paying interest of 5 per cent on $30,000,000——

Mr. MERRITT (interposing). Are the holders of the bonds still living?

Mr. FREEMAN. They are still living and they have undertaken very earnestly to collect that interest, but we defeated them in their lawsuit. The final decree in that case was handed down about two months ago.

Mr. HUDDLESTON. The total indebtedness is how much, including all classes of debt?

Mr. FREEMAN. The total indebtedness of the Texas & Pacific Railway Co., bonded indebtedness, is $56,000,000.

Mr. HUDDLESTON. That is with this $4,000,000 and all?

Mr. FREEMAN. You are not asking about the indebtedness for equipment?

Mr. HUDDLESTON. Yes; I wanted to get what its financial condition is.

Mr. FREEMAN. The equipment obligations outstanding would be about $5,000,000. That would make the bonded debt, including equipment obligations, say, $60,000,000. But most of the equipment obligations were issued during the receivership.

Mr. HUDDLESTON. Have any plans for reorganization been promulgated?

Mr. FREEMAN. I have the printed memorandum here of the purposes of this bill, which sets out what we desire to do. [Mr. Freeman files it.]

(The memorandum was filed with the committee.)

Mr. HUDDLESTON. In a general way, what are the plans?

Mr. HUDDLESTON. In a general way, the plans are these: As I have stated, there is a fixed first mortgage of $25,000,000. That will be left intact. There is a mortgage of $5,000,000 on branch lines. That will be left intact. Those are fixed charges. Of course, the equipment obligations would be left intact. The $25,000,000 outstanding income bonds are seconds, are owned practically by one interest.

Mr. HUDDLESTON. What interest is that?

Mr. FREEMAN. That is a railroad interest, the old St. Louis & Iron Mountain Railroad, now the Missouri Pacific Railroad, which is a very friendly connection with the Texas & Pacific, and really is our direct connection with Texarkana to St. Louis. It is our operating connection from Texas to St. Louis. They own about all of the seconds. They have agreed—and you will see we have a provision in this bill to cover that situation—they have agreed that they will take preferred stock, noncumulative preferred stock, noncumulative 5 per cent preferred stock in satisfaction of the $25,000,000 of these second-mortgage bonds. That wipes out $25,000,000 of the bonded indebtedness and it becomes $25,000,000 stock indebtedness. That does not increase our obligations at all and obviates the necessity of making any assessment upon stockholders at all.

Mr. HUDDLESTON. What about the remainder of the indebtedness?

Mr. FREEMAN. The $4,000,000 is what you would call the remainder. They—the Missouri Pacific Railway Co.—own the notes of $4,000,000 outstanding.

Mr. HUDDLESTON. That is the St. Louis and Iron Mountain?

Mr. FREEMAN. The Missouri Pacific. We call it the Missouri Pacific now because the Iron Mountain was bought in by the Missouri Pacific. They own the $4,000,000 worth of notes, and they will fund those or make some sort of an arrangement by which they will be taken care of without increasing the bonded debt of the company.

Mr. HUDDLESTON. What is proposed shall be done with the stockholders of the company?

Mr. FREEMAN. The stockholders will not be assessed under the proposed plan; you understand, these income bonds are prior in authority and prior in right to the common stockholders. The purpose of this bill is that we shall fund these income bonds with preferred stock. That leaves the situation just as it is, except we remove a lien debt and substitute a stock debt.

Mr. HUDDLESTON. And the stockholders will retain the stock?

Mr. FREEMAN. The present stockholders will retain their stock, and this plan can not be made effective except by majority vote of the stockholders, with the consent of the Interstate Commerce Commission. That is covered by the bill.

Now, after we get the income bonds funded—understand, we have a limitation of $40,000 a mile on our road as to present bonds that we may issue under our charter, or that we might originally issue under our charter, were limited to construction bonds entirely. Being a road in process of being built, our charter provided that we might issue bonds for construction. That is the only

Digitized by Google

class of bonds we can issue except certain land-grant bonds which were secured by a lien upon our lands in Texas.

Under this bill we have broadened the terms, and that is what the Interstate Commerce Commission has specifically passed upon. We can issue bonds not alone for construction—because as a matter of fact in one sense the construction period is past—but for additions, betterments, equipment, and improvements. In other words, what we need now is money to put the property in a condition to meet the increased value of traffic that has come from the growth of the country.

Mr. HUDDLESTON. How do you expect to get any new money?

Mr. FREEMAN. As and when these betterments, additions, and improvements are made, we will make application to the Interstate Commerce Commission for authority to issue an improvement bond, and only when the security has been put there. We will issue improvement bonds and we expect to raise the money on the improvement bonds.

Mr. HUDDLESTON. There is no proposal in the plans of reorganization to put any new money into the road?

Mr. FREEMAN. No; no new money, except the money that we obtain from improvement bonds and earnings——

Mr. HUDDLESTON (interposing). Merely a change in the form of securities?

Mr. FREEMAN. That is all, and it gives us an opportunity to wipe out the $25,000,000 mortgage and issue an improvement mortgage, which would have a real value on the market. With a $50,000,000 outstanding mortgage, first and second, we could not float a loan or raise a cent of money on a third mortgage on the property.

Mr. HUDDLESTON. This system was formerly called a Gould road, was it not?

Mr. FREEMAN. Back in the early eighties, say prior to 1885, the Texas & Pacific, the St. Louis, Iron Mountain & Southern, the Missouri Pacific, the Denver & Rio Grande, the M., K. & T., now of Texas, the International & Great Northern, were called the Gould system of roads. They have gradually disintegrated until none of those lines now are really Gould roads, with the exception of the St. Louis & Southwestern of Arkansas and St. Louis & Southwestern of Texas.

Mr. HUDDLESTON. What is the predominant financial control? What is it?

Mr. FREEMAN. You mean from the standpoint of the bankers?

Mr. HUDDLESTON. Yes.

Mr. FREEMAN. Speaking only from my general information, not from detailed knowledge, the banking firm that is interested in banking this and possibly will underwrite—and of course the underwriting of your security after all is the only way you can float it—the banking firms of Kuhn-Loeb, and Blair & Co. of New York.

Mr. HUDDLESTON. Now I do not want to carry on such a long examination, but perhaps you would cover this in your general statement: I would be very glad myself for you to state, just as briefly as it is convenient for you to do so, exactly what this bill does.

Mr. FREEMAN. We have a limitation in our charter of so much bonding capacity per mile of railroad.

Mr. HUDDLESTON. So much what?

Mr. FREEMAN. So much bonding capacity per road per mile of $40,000 per mile, bonded indebtedness, issued for construction purposes alone. Of course that is passed. Congress in its wisdom created the Interstate Commerce Commission and has relegated to that body the right to say what securities you might issue and under what conditions you might issue them, and that law applies to every railroad in the country. Where there is a limitation in its charter such as ours. We want that limitation removed so that we can go to the Interstate Commerce Commission, not this year nor next year, but maybe 50 years from now or 25 years from now, and ask for a bond issue based upon additions, betterments, and improvements that we have made or expect to make.

Mr. RAYBURN. That is now controlled by the Interstate Commerce Commission?

Mr. FREEMAN. By the Interstate Commerce Commission; yes. Congress has relegated those matters to the Interstate Commerce Commission.

Mr. RAYBURN. You use the term "Congress," and I supposed you meant the Interstate Commerce Commission?

Mr. FREEMAN. Yes, sir.

Digitized by Google

The CHAIRMAN. Mr. Freeman, you would say, would you not, that the purpose now under this new bill, the latter bill, is to bring the railroad distinctly under the jurisdiction of the Interstate Commerce Commission?

Mr. FREEMAN. Absolutely.

The CHAIRMAN. As provided in the transportation act of 1920?

Mr. FREEMAN. Yes, sir; and they have worded section 5 themselves. Our wording in our bill was a little different from theirs, and they formulated in their report to this body section 5, which brings us and brings every term of this bill and every term of our old charter under their jurisdiction. We simply want to be able to go before that commission in the matter of issuing bonds and stock without any limitation whatsoever upon the commission. You understand, if we have a charter limitation the commission is bound by that. They can not vest us with any rights, so if we have a charter limitation that must be removed.

Mr. MAPES. You want to repeal any statutory limitations which are more extensive than the Interstate Commerce Commission?

Mr. FREEMAN. Yes, sir—or rather, restrictive, more than anything else.

Mr. RAYBURN. Isn't this about what this bill does with reference to the Texas & Pacific Railway Co., that it puts it on exactly all fours with reference to securities, etc., before the Interstate Commerce Commission with all the rest of the roads of the country that are owned now, and with the same privileges which it does not enjoy at this time.

Mr. FREEMAN. That is all it does.

Mr. HUDDLESTON. That is merely a single provision.

Mr. FREEMAN. The next provision applies to the stock. The Texas & Pacific Railway Co. has no authority under its present charter to issue preferred stock at all. Now we ask for authority, and this bill gives us authority, to issue additional stock subject to the Interstate Commerce Commission, with such priorities, preference or rights as may be provided. The purpose of that is to authorize us to issue preferred stock for the purpose of funding the $25,000,000 of income bonds. Without the authority to issue preferred stock we could not fund those bonds.

Mr. MAPES. To that extent, are you asking for a privilege which the Interstate Commerce Commission could not extend to you under the general law?

Mr. FREEMAN. Yes; under that provision we are asking something that the Interstate Commerce Commission could not vest us with; that is, a charter right to issue preferred stock.

Mr. MAPES. I am rather curious to know what your company got for those income bonds that you speak of.

Mr. FREEMAN. The income bonds were sold—you mean originally?

Mr. MAPES. Yes.

Mr. FREEMAN. I will have to go back then, to answer your question accurately, to their organization of 1886. When these income bonds were issued the company had outstanding at that time division-line mortgages in Texas and Louisiana, and land-grant mortgages, and under the plan of reorganization the parties who held those original securities got, say, 60 per cent of first, and 60 per cent of seconds. In other words, they practically were sold at par to that extent. That is existing indebtedness was funded for these outstanding incomes, first mortgage indebtedness. It did not bring us one 5 cents of new money.

Mr. MAPES. Those second mortgage bonds, the interest being payable only when the board of directors sees fit to pay it, and out of the earnings of the company, are not in effect much more than preferred stock anyhow, are they?

Mr. FREEMAN. It is preferred stock without the right to vote, that is practically what it is, but we got no cash for the sale of these income bonds originally, but we got the equivalent to cash in that we funded the original mortgage indebtedness and we sweetened that indebtedness by giving land-grant bonds and other bonds in addition to the bonds themselves.

These income bonds are a lien on the property. It is a mortgage on the property which acts the same as a second mortgage.

Mr. MERRITT. It doesn't give the holders any advantage but it makes a lien on the company.

Mr. FREEMAN. It makes a lien on the company, which would depreciate, of course, the value of any third mortgage. We could not float a third mortgage with those bonds outstanding.

Digitized by Google

Mr. HUDDLESTON. The first section of this bill seems to ratify and confirm consolidations and other actions which the Texas & Pacific has heretofore taken. That is one thing it seems to do.

Mr. FREEMAN. That grows out of what I have just stated to the committee, the fact that we obtained the Southern Trans-Continental and the Southern Pacific.

Mr. HUDDLESTON. Is there any doubt as to the legality of that transaction?

Mr. FREEMAN. No, sir; Congress has already confirmed that by the act of 1874.

Mr. HUDDLESTON. Why, then, should they reconfirm it?

Mr. FREEMAN. Because of the fact that after we obtained these lines we extended the line in 1881 to New Orleans, which was not in existence before we got the New Orleans & Pacific line, and we would like to have that brought under the same terms as the Southern Trans-Continental and the Southern Pacific mergers.

Mr. HUDDLESTON. Is there any doubt as to the legality of that action?

Mr. FREEMAN. None in my mind; but we would like to make a positive congressional record of it, because the State of Louisiana expressly authorized it—authorized the New Orleans & Pacific to convey all of the property to us, and we have a regular act of conveyance from that company to us, but as we obtained it since the act of 1874, we thought it well to embody it in this act, as showing what our railroad was at this time.

Mr. HUDDLESTON. Isn't there very broad confirmation here consummated in lines 14, 15, 16, and 17, on page 2 of this bill—of course, it is impossible that we should know just what we have done in the past—if we should pass it?

Mr. FREEMAN. What you refer to is the fact that from time to time we can locate and construct additional lines.

Mr. HUDDLESTON. No; what I refer to is this: The statement that certain lines, and so forth, are declared to be the lines of the Texas & Pacific Railway Co. Now, that is a very broad blanket provision, and I believe you will agree that it is a rather dangerous thing for a committee to blunder into without knowing exactly what the effect of it is.

Mr. FREEMAN. Well, of course, we have operated these lines as the lines of the Texas & Pacific, and made official reports for a period of about 41 years. If I were discussing the matter from the standpoint of a lawyer to a judge—I mean in a court—the court would tell me that "we take judicial knowledge of that fact. They have done so. They have taken judicial knowledge of what constitutes the main line.

Mr. HUDDLESTON. Couldn't committees sometimes take judicial knowledge of things that they have no actual knowledge of? That is what I am trying to avoid.

Mr. FREEMAN. We have an abstract of title; we have all our conveyances down to date and everything of that kind.

Mr. HUDDLESTON. The thought I have in mind is that if it is not necessary, it seems to be it ought not to be done; if it is necessary, then we ought to know what we are doing.

Mr. FREEMAN. Well, it is necessary to the extent that we would like to have Congress specify what are the main lines of our railroads, because you put a limitation in the old charter of $40,000 a mile. You have already specified in the act of 1874. Up to that time you have already specified. You took the Southern Trans-Continental, although you did not describe it as we do, from Texarkana to Fort Worth you call it the Southern Trans-Continental—in 1874, and you took the Southern Pacific and you merged those roads and made them a part of the Texas & Pacific and subject to our charter. Now, since that time we have acquired only the New Orleans & Pacific, and that is the only additional main line that would be included in this bill.

Mr. HUDDLESTON. The second purpose of this section was to authorize you to build branches, extensions, and other railroads. Are these specific extensions contemplated?

Mr. FREEMAN. That word "extension" may be rather broad. I would not object to its elimination or to its modification to points in Texas and in Louisiana and Arkansas, or to eliminate it, but I do believe that we should be given the right to construct branch lines. You know the value of a branch line to a trunk line as a feeder. Our original charter was very peculiar in that particular. We could not obtain, under our original charter, branch lines in Texas unless they had been incorporated prior to the time we had been incorporated.

Digitized by Google

"Theretofore incorporated" our charter says, not "thereafter incorporated," and the result is that, of course, there was not a branch line incorporated prior to our time.

Mr. HUDDLESTON. Then it is your idea that you need power to acquire branch lines constructed by other companies?

Mr. FREEMAN. By other companies.

Mr. HUDDLESTON. Not that you need power to build them yourselves?

Mr. FREEMAN. I think you understand we are not given any authority to build branch lines in our original charter at all, but we could acquire those already built.

Mr. HUDDLESTON. You have built many such?

Mr. FREEMAN. No, indeed, not one in Texas; unfortunately for us, we have not. Now, in the oil territory out from Ranger and eastward—and that territory is immense—when I say to you that one of our stations out there, the station of Ranger, its ordinary station receipts in the old days would run about $1,000 a month and they have since run up to $1,000,000 a month, you can have an idea how business increased during the oil periods. There have been many of those little short oil lines built; the oil territory moves usually in a fixed direction. In that territory it is moving a little northwest, going out toward Breckenridge. There are five or six of those little oil branches that are built out there. As a rule they are superficially financed, and when the oil boom is big they can afford to continue and operate, but when the oil boom goes down to practically normal they operate at a loss. We could acquire those roads. We have had several of them offered to us and we would have acquired them and made substantial properties out of them, but we could not do so under our charter.

Mr. HAWES. Mr. Freeman, as I understand this matter, the facts are that the Texas & Pacific was incorporated under a Federal charter years ago, has since that time been brought under the jurisdiction of a new act of Congress creating the Interstate Commerce Commission, and under that act the issuance of bonds, stocks, for betterments of your roads are passed upon by the Interstate Commerce Commission?

Mr. FREEMAN. Absolutely.

Mr. HAWES. Now, under the old charter there is a limitation placed upon your ability to borrow, and so forth.

Mr. FREEMAN. And the purpose for which we might borrow as well.

Mr. HAWES. The purpose for which you might borrow?

Mr. FREEMAN. Yes, sir.

Mr. HAWES. At the present time the Interstate Commerce Commission can direct the operation of your road in its relation to safety appliances, arrangements for employment of labor, and practically supervise and direct its management.

Mr. FREEMAN. And does.

Mr. HAWES. And that is done by the Interstate Commerce Commission with every road in the United States, including your own, but there is only one road in the United States that can not present its claim to the Interstate Commerce Commission for improvements or betterment in the mater of securing additional financial assistance?

Mr. FREEMAN. Yes, sir.

Mr. HAWES. And that is the Texas & Pacific?

Mr. FREEMAN. That is true.

Mr. HAWES. And the only thing that you require in this bill and want is to be put upon an exact equal parity with the other roads of the United States?

Mr. FREEMAN. Yes, sir; that is all.

Mr. HAWES. And unless that right is given to you, it puts you in the anomalous position of permitting the Interstate Commerce Commission to regulate your road in certain directions, but not to provide the relief which you require in other directions?

Mr. FREEMAN. Even though they want to do so.

Mr. HAWES. Even though they have the disposition and saw the right and necessity of doing so?

Mr. FREEMAN. Yes, sir.

Mr. HAWES. Relating to the matter of notice, this matter has been in the papers frequently?

Mr. FREEMAN. This bill was published in full—that is, the one that this bill was taken from, which was fuller—has been published in full in the Texas papers. The entire bill has been published.

Digitized by Google

Mr. HAWES. Have you heard any objections from any source to the passage of this bill?

Mr. FREEMAN. The only objection that I have seen was a telegram from a labor organization at Big Springs, Tex., and that went only to the point that until we settle our labor differences we ought not to have any authority to do anything—our shopmen's strike.

Mr. HAWES. Have there been any objections from any officers of the Government?

Mr. FREEMAN. No, sir; no officer of the Government has objected, State or Federal. As a matter of fact, before we introduced this bill at all we went to the Interstate Commerce Commission and discussed it with them fully, and the commission was thoroughly advised of the purposes of this bill before we introduced it, and expressed their approval of it.

Mr. HAWES. After this bill is passed, if it is passed, anything along the line of financial reorganization, increasing the bonded indebtedness or anything of that kind, would first have to be passed upon by the Interstate Commerce Commission?

Mr. FREEMAN. Yes, sir; by the terms of the bill.

Mr. HAWES. Your entire evidence as to the operation of the road, its acquirement of property, its railroad connections, would be reviewed by that body?

Mr. FREEMAN. Yes, sir.

Mr. HAWES. In other words, the questions that have been asked you by Representative Huddleston would necessarily be taken up by the Interstate Commerce Commission, reviewed by them, and testimony heard on all those details?

Mr. FREEMAN. Yes, sir.

Mr. RAYBURN. On the question of publicity, I will say that the district that I represented is traversed by this railroad; the transcontinental division runs through my home town; it runs through the home town of Mr. Black, of Texas; it runs through the home town of Mr. Sumners, of Texas; it runs through the home town of Mr. Blanton, of Texas, and terminates in the home town of Mr. Hudspeth, of Texas, and I know that the people along the line that I live on want this railroad put into some sort of shape where it can serve the public satisfactorily, which it has not been doing in the past, and that they have come to believe with the railroad companies that it is a question of finance with them.

And further, I have had no protest from anyone or from any source with reference to the enactment of this legislation. Now there may be some features in the bill that ought to be eliminated, but as to the general purposes of the bill, I feel confident that all the people to whom notice has gone of this legislation have no objection to its enactment, so far as I have been able to find.

Mr. GRAHAM. Do you have a public utilities commission in your State?

Mr. FREEMAN. We have a railroad commission in Louisiana and a railroad commission in Texas.

Mr. GRAHAM. Of course I suppose this matter has never been submitted to either of them?

Mr. FREEMAN. No; because of the fact that they had no jurisdiction, but if they had any opposition to it they have full knowledge and they would readily have expressed their opposition at once.

Mr. GRAHAM. What makes you think so?

Mr. FREEMAN. Because they do not hesitate about acting if they think the public should be represented. They always have.

Mr. RAYBURN. I might say, Mr. Freeman, that this railroad runs through the home town of the chairman of the Texas commission, Mr. Mayfield.

Mr. GRAHAM. Let me see if I understand this.

Mr. FREEMAN. We can not go to either one of those bodies to obtain these rights.

Mr. GRAHAM. Let me see if I understand what this bill does. The first section authorizes your road to construct and acquire sections or branches of your road, and you think that is necessary because of the limitations of the original act?

Mr. FREEMAN. The matter of extensions, I admit, is a good broad term. Technically, I know we have a different meaning from what the ordinary public would say. It is usually extensions of your branch lines, or things of that sort, but if we are given the right to extend the road we should have the right to acquire branch lines.

Digitized by Google

Mr. GRAHAM. For instance, Judge, in the original act, section 4, providing for consolidations with other lines, it is stated, "But no such consolidation shall be with any competing through line of railroads to the Pacific Ocean."

Mr. FREEMAN. That is right.

Mr. GRAHAM. I assume the idea of the original drafters of this bill being that competition ought to be maintained, if possible?

Mr. FREEMAN. Yes, sir.

Mr. GRAHAM. Well, now, if you had that constituting extensions, I do not know but what you might do just exactly what the charter says you should not do.

Mr. FREEMAN. If we had a right to make extensions, we possibly could do what the charter contemplated should be done—that we would parallel somebody else's line, not consolidate with them, but compete with them by building alongside of them. That is what Congress wanted to encourage. The charter wanted to discourage consolidations with other lines, parallel and competing lines, but if we operate lines independent that means competition.

Mr. GRAHAM. As a matter of fact, I do not know whether it is advisable at this day to restrain you from combining with competing lines, in view of the transportation act and its provisions, but the original charter had that limitation, and I imagine that you would hardly ask the Congress to depart from that principle.

Mr. FREEMAN. We are not changing that feature of our charter at all.

Mr. GRAHAM. Well, then, don't you imagine that that language might be shaped up a little and confined to branches of your lines of railroad?

Mr. FREEMAN. There would be no objection to eliminating at this time the word "extension."

Mr. GRAHAM. All right. Now, let us leave that.

Mr. FREEMAN. Or to put the limitation "extensions in Texas, Louisiana, and Arkansas."

The CHAIRMAN. You mean line 19, page 2?

Mr. GRAHAM. Yes.

The CHAIRMAN. So that it would read how, as you suggest?

Mr. FREEMAN. Just aster the word "railroads" insert the words "within the States of Texas, Louisiana, and Arkansas."

Mr. LEA. Mr. Chairman, in that connection, I would like to ask a question. Would there be any possible benefit to the public in depriving you of the right to construct extensions?

Mr. FREEMAN. Why, the public would be very much interested in any road, a trunk line, extending its lines because, of course, it would only extend them to territory that needed a new railroad, and to that extent the public would be benefited. And again, in order to extend the line you have to get a certificate from the Interstate Commerce Commission that it is for the public benefit. That is one of their cardinal rules laid down in the transportation act.

Mr. LEA. But for what reason do you suggest the elimination of the word "extension?"

Mr. FREEMAN. It should be in there, but if there is any question about it we are so sorely in need of the legislation that we would not stand back and run the risk of losing the bill for the purpose of the opportunity to extend the road, but it should be in there, so far as that is concerned, as a matter of public policy.

Mr. HAWES. And if it is not in there, in certain districts of Texas or Louisiana requiring statutes for the purpose of enlarging transportation facilities you might be deprived of a thing that the Interstate Commerce Commission might demand of you and ask that it be done.

Mr. FREEMAN. You might put in the limitation limiting it to Texas, Louisiana, and Arkansas. If that limitation is in there it would limit it to those States. If those limitations were not in there and it went out entirely, we would have to make application again to amend our charter for the purpose of authorizing us to make such extensions.

Mr. HAWES. If you want to make any extension for 5 or 10 miles it would require an act of Congress.

The CHAIRMAN. The Interstate Commerce Commission has approved that text at that point without making any reservation.

Mr. RAYBURN. If you put in there the limitation in Texas, Louisiana, and Arkansas, that covers all the territory you operate in anyhow.

Mr. FREEMAN. At this time; yes.

Digitized by Google

Mr. GRAHAM. I do not understand that he figures or that anyone is figuring on taking out the word "extensions," but it is simply adding this additional language, qualifying it.

Mr. LEA. I have been wondering what objection there is to their having the power of extension.

Mr. GRAHAM. Into other States?

Mr. LEA. Yes.

Mr. GRAHAM. I do not think we ought to go that far. We would then be going beyond the purview of the original act, and I do not understand that these gentlemen want that. I do not think we ought to broaden the act any.

Mr. FREEMAN. We already have the power to extend the western termini at Sierra Blanca to San Diego, Calif., but it would not be profitable for us to do so at this time.

Mr. GRAHAM. Over a certain route?

Mr. FREEMAN. Over a certain route, defined.

Mr. LEA. Well, the right to extend would still be subject to the control of the commission.

Mr. GRAHAM. Yes.

Mr. FREEMAN. Absolutely.

Mr. LEA. And I can not see any reason why the railroad should not build, if the commission approves it.

Mr. GRAHAM. Now, Judge, I want to ask another question or two. If that additional power is given, then you are given the additional power of issuing your bonds, without limitation, to the amount of $40,000 a mile. The original act, section 14, provided that you could issue two kinds of bonds, construction and land bonds. The total value of the construction bonds not to exceed $30,000 a mile of your railroad; the total face value of your land bonds not to exceed $2.50 an acre for all the land mortgaged.

Mr. FREEMAN. That act was amended——

The CHAIRMAN (interposing). Did you say $30,000? Is that right?

Mr. GRAHAM. Yes; that is the original act.

Mr. FREEMAN. That was amended by the act of Congress of May 2, 1872, and the $30,000 was raised to $40,000 a mile, and we had a right to include the land grants in that. That is a special act of Congress increasing that amount.

Mr. GRAHAM. That is, that the construction bonds and the land bonds together might equal $40,000?

Mr. FREEMAN. Section 2 of the act of 1872 provides—

"That the said The Texas and Pacific Railroad Company shall have power and authority to issue the construction and land bonds authorized by the eleventh section of said act of incorporation, for such amounts, not exceeding $40,000 per mile of said road, of construction bonds, as said cmpany may deem needful to provide for the construction and equipment of its line, and to include in the mortgage or mortgages to secure said construction bonds all or any portion of the lands granted in aid of the construction of said railroad."

Under the original charter, land grant bonds or mortgage bonds had to be independent of the construction mortgage.

Mr. GRAHAM. Well, now, why under that act of 1872—you think it is limited by the language "as said company may deem needful to provide for the construction and equipment of its line"?

Mr. FREEMAN. Yes, sir.

Mr. GRAHAM. And that, therefore, now, needing bonds for other purposes, you must have this limitation removed so that the third section of the act does nothing more than remove the limitation?

Mr. FREEMAN. That is the fact of it.

Mr. GRAHAM. It does not increase the bonded limit or do anything else except give you power to issue it for some other than construction or equipment purposes?

Mr. FREEMAN. It eliminates the bonded limit and leaves that to the Interstate Commerce Commission.

Mr. GRAHAM. Now, section 4.

The CHAIRMAN. That brings them within the transportation act.

Mr. GRAHAM. Section 4 of the bill permits you to increase, by resolution of your board of directors and by vote of your stockholders, your stock issue above the $50,000,000 that has been heretofore authorized?

Mr. FREEMAN. Yes, sir.

Mr. GRAHAM. I notice it places no limitation upon it.

Digitized by Google

Mr. FREEMAN. We have never issued the $50,000,000 of common stock, but that limitation will be with the Interstate Commerce Commission also.

Mr. GRAHAM. Well, I imagine that any application of stock—any issue of stock will have to be on application and approval by the Interstate Commerce Commission.

Mr. FREEMAN. Absolutely, and we covered that in our original bill, you will find. We went quite into detail as to that, but they eliminated our section 5 and worded their own section 5, which is general in its terms, giving them absolute jurisdiction as to the carrying out of any one of these provisions in the matter of issuing securities.

Mr. GRAHAM. Now, then, there is only one thing more that this bill does that I see, and that is that section 7 makes you a citizen of the county of Dallas in Texas.

Mr. FREEMAN. I will state why that is. You will find in the first section of our charter that they use the general term that we are "hereby created a body politic and corporate in fact and in law, by the name, style, and title of the Texas Pacific Railroad Co., and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States."

That is in our charter, and all corporations have that right. The Texas & Pacific Railway Co., being a Federal corporation, under the old days and under the old law or prior to 1915 could sue and be sued in the Federal courts by virtue of its Federal charter alone. In other words, being a Federal corporation, we could go into the Federal court and could sue and be sued, but by the act of 1915 a Federal corporation, ipso facto, by virtue of its charter could not sue or be sued in a Federal court. In other words, the charter did not raise a Federal question. Then the court further held that the Texas & Pacific Railway Co., being a Federal corporation, and there being no special act defining where its citizenship was, was not a citizen of any State at all; in other words, it occupied the same relation to the Federal courts that a citizen of the District of Columbia occupies. A citizen of the District of Columbia is not a citizen. He can not sue or be sued in the Federal court, because he is not a citizen. The Federal court jurisdiction is dependent upon two things primarily: First, there must be diversity of citizenship between plaintiff and defendant. That is one ground of jurisdiction where the amount is jurisidictional. Second, there must be a Federal question. Well, with charter wiped out we have no Federal question, and not being a citizen there could be no diverse citizenship. In other words, we had no situs, so we have adopted here the congressional rule that has been applied to national banks. National banks are made inhabitants of the State in which their general offices are located—citizens of the State in which their general offices are located, and inhabitants of the district where the principal office is located. That is the purpose of this section.

Mr. GRAHAM. This, of course, is limited, too, for the purposes of action, at law.

Mr. FREEMAN. And in equity.

Mr. GRAHAM. Yes, I see; "and all suits in equity." Now that has no reference to your situs for purposes of taxation?

Mr. FREEMAN. None at all. In what we call the first railroad commission suit, 154 U. S., we are amenable to the State laws in matters of taxation, except the tax on our Federal charter; in other words, on our right to be. No State, following the old National Bank cases, can tax a Federal charter, because if they could tax it they could absolutely wipe it out. Of course there is no such thing as a tax on a Federal charter now, and possibly never would be, but they could not tax our right to be, because if they could, as I say, they could tax it to death.

Mr. GRAHAM. When did you get your name changed from "Texas-Pacific" to "The Texas & Pacific"? Is there a separate act for that?

Mr. FREEMAN. A separate act passed for that purpose.

Mr. GRAHAM. That is all right, then.

Mr. FREEMAN. And I want to say that in printing the bill I have changed several copies in which I have changed this "t" to a capital, but the printer will always make a small "t" out of it. Now the original act was incorporated as "the"—not part of the title "Texas Pacific Railroad." By special act of Congress our title was changed to "The Texas and Pacific Railway Company."

The CHAIRMAN. The article is part of the incorporated name?

Mr. FREEMAN. Yes, sir.

Digitized by Google

The CHAIRMAN. It should so appear wherever the name comes.

Mr. FREEMAN. Yes, sir; except in two instances in the bill, and that is in the caption and on the third line of page 3 and section 3.

Mr. GRAHAM. I will tell you why that is. You probably drafted your bill properly in the first place, but the Printing Office has a rule that that word "the" shall begin with a small letter, and nobody on earth can get them to change it.

The CHAIRMAN. We will show them whether we can or not.

Mr. FREEMAN. They have changed it in every instance with me.

The CHAIRMAN. Mr. Freeman, the Interstate Commerce Commission suggested a change in the title of the bill.

Mr. FREEMAN. Yes, sir.

The CHAIRMAN. So that it would read as follows: "A bill"—or "An act amendatory and supplemental to an act entitled 'An act to incorporate the'"—that should be a capital there?

Mr. FREEMAN. No; that is correct. That is the first article.

The CHAIRMAN (reading): "'Incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes,' approved March 3, 1871, and acts supplemental thereto, approved, respectively, May 2, 1872, March 3, 1873, and June 22, 1874."

Does that change meet your approval?

Mr. FREEMAN. Yes, sir; that is proper.

Mr. HUDDLESTON. One more question. I had not concluded at the time I was interrupted.

Mr. FREEMAN. What is the mileage of your road?

Mr. FREEMAN. The actual mileage owned is 1,850, and, to use round figures, 1,850 miles—1,849 and a fraction.

Mr. HUDDLESTON. And you have not exceeded this charter limit of $40,000 a mile?

Mr. FREEMAN. No; we have not reached that by nearly $12,000,000 or $13,000,000.

Mr. HUDDLESTON. And your present capital stock is $50,000,000?

Mr. FREEMAN. $50,000,000.

Mr. HUDDLESTON. All issued?

Mr. FREEMAN. No, $38,500,000; and we have never paid a single dividend on that stock, but it has been assessed 10 per cent in 1887.

Mr. HUDDLESTON. $38,500,000 you say?

Mr. FREEMAN. Yes, sir.

Mr. HUDDLESTON. Leaving $12,500,000 unissued in the treasury?

Mr. FREEMAN. When I say $38,500,000, the $500,000 is approximate. It may be $350,000 or $340,000.

Mr. HUDDLESTON. Then it would be correct to say that the remainder, $12,500,000 approximately, is in the treasury?

Mr. FREEMAN. Yes, sir.

Mr. HUDDLESTON. What court did you say had held that you were not a citizen of any State?

Mr. FREEMAN. The Supreme Court of the United States in the case of the Bankers Trust Company *v.* The Texas Pacific.

Mr. HUDDLESTON. And the effect of that decision is to hold that you can not remove any case from the State court to the Federal court on the grounds of diverse citizenship?

Mr. FREEMAN. Or be sued in a Federal court at all.

Mr. HUDDLESTON. You can not be sued in a Federal court at all?

Mr. FREEMAN. Unless there is a Federal question involved outside of our charter. Of course, there might be a Federal question coming under the fifth amendment or fourteenth amendment or various amendments which anybody could be sued in the Federal court on.

Mr. HUDDLESTON. Now, would it not be proper for you to be, for the purpose of these suits, a citizen of each of these States in which you do business?

Mr. FREEMAN. There would be no objection to that. The only thing is—as a rule a corporation—of course, the ordinary corporation is conclusively presumed to be a citizen of the State of its incorporation. Now, our general offices are located in Dallas and have been for a long period of time—that is, our operating general offices—and in Texas.

Mr. HUDDLESTON. Would there be any reason, in your mind, why suits brought in Texas might not be removed to the Federal court, whereas if the same suits were brought in Louisiana they would be removed?

Digitized by Google

Mr. FREEMAN. There is no reason; in Texas you could not. If we were sued in the State court in Tesas, of course the case could not be removed because diverse citizenship would not exist.

Mr. HUDDLESTON. Why should the same kind of case be removed in Louisiana or Arkansas?

Mr. FREEMAN. Well, of course that rule would apply to any corporation, any corporation that deals in more States than one.

Mr. HUDDLESTON (interposing). So long as we are saying that you shall be a citizen for a certain purpose, a pure fiction of law, of a certain State, we could just as easily say you should be a citizen for the same purpose of each State.

Mr. FREEMAN. There would be no objection to it, except I am following the orderly way of other corporations at this time. A corporation doing business in Arkansas, a foreign corporation, would be a nonresident and conclusively presumed to be a citizen of the State of its incorporation. But I would have no objection to making us a citizen of three States.

Mr. HUDDLESTON. I notice in lines 14 and following, on page 4, a rather unusual provision which provides that capital stock which may be issued in excess of the present authorization shall be subject to such limitations and restrictions as may be determined, etc. That is a very unusual course.

Mr. FREEMAN. Oh, no, most of the State laws have that. Those are the State laws, and the wording of the Sate statute which regulates the issuance of preferred stock. That is why that is in there.

Mr. HUDDLESTON. Now, that is not applicable to preferred stock alone and note that that is a limitation and not such a right as is included in line 15, because that is a privilege and an advantage which would contemplate preferred stock, but your authorization is here of an increase in stock, and it seems to me would authorize the stockholders to have advantages over the holders of the present common stock, or would give them less rights and privileges than the holders of stock at present, subject to the limitations as to holding.

Mr. FREEMAN. But it takes a majority of present stockholders. We could not make that effective as a corporate act until the majority of the present stockholders authorized it, and then it would have to be ordered by the Interstate Commerce Commission.

Mr. HUDDLESTON. Do you think it is desirable to have more than one class of common stock?

Mr. FREEMAN. There is only one class of common stock.

Mr. HUDDLESTON. This authorizes two classes.

Mr. FREEMAN. No; that is when you give such preferences or priorities as you make to any preferred stock.

Mr. HUDDLESTON. Now, I understood that that point was covered by section 3. I have not examined it very carefully.

Mr. FREEMAN. Section 3 relates to bonds.

Mr. HHDDLESTON. It does not cover the subject of preferred stock?

Mr. FREEMAN. Not at all; no, sir.

Mr. HUDDLESTON. I take it that the increase in capital stock provided for in section 4 would cover increases in common stock?

Mr. FREEMAN. It would.

Mr. HUDDLESTON. It does not differentiate the outstanding stock from that that is to be issued, and as such it authorizes the further issuance of common stock of a different order and entitled to different privileges, less and more, as the case may be, to other holders of common stock.

Mr. FREEMAN. Well, when you take a certain amount, a certain per cent of the common stock, and give it certain privileges, then it automatically becomes preferred or preferential stock.

Mr. HUDDLESTON. Provided they are privileged, but if there are disadvantages, what would you call it? You would not call that preferred stock?

Mr. FREEMAN. No.

Mr. HUDDLESTON. I have the thought in my mind that if what you mean is preferred stock, if that is what you really mean, it ought to be so expressed and differentiated clearly from common stock, and not be an increase in the common stock capitalization, but be a direct authorization of the issuance of so much in preferred stock, entitled to such benefits, privileges, and restrictions as might be decided upon.

Mr. FREEMAN. Well, those are matters, as you can see, that are purely matters of commerical detail or corporate detail. There is a limitation. The commission in the firsf place puts a limitation as to what stock may be issued

Digitized by Google

and its preferences and priorities. They pass on that after the board of directors and the stockholders, as to the nature of the preference or the wording of the preference or the limitation. Of course, you could hardly fix that in the charter.

Mr. HUDDLESTON. I understand, but now there is another point. This takes the lid off, it seems to me, as to the amount of capitalization which the company may have in common stock.

Mr. FREEMAN. Yes, sir; because the commission regulates this.

Mr. HUDDLESTON. The commission regulates it in requiring value.

Mr. FREEMAN. Yes, sir; as to the stock.

Mr. HUDDLESTON. But you could increase your common stock to any extent you might desire.

The CHAIRMAN. No; subject to the control of the commission.

Mr. HUDDLESTON. Well, I do not know about subject to the control of the commission.

Mr. FREEMAN. It is absolutely subject to the control of the commission.

Mr. HUDDLESTON. That is a question of law.

The CHAIRMAN. How can they do it otherwise?

Mr. HUDDLESTON. Here is an authorization, a direct authorization not subject to the control of the Interstate Commerce Commission.

Mr. FREEMAN. It is section 5. They worded that themselves.

The CHAIRMAN. That throws it absolutely under the control of the commission.

Mr. GRAHAM. It says "that all power and authority granted by this act" shall be subject to the provisions of the interstate commerce act.

Mr. HUDDLESTON. I see it. The next section seems to reach that point.

Mr. FREEMAN. They worded that themselves. That is their own language.

Mr. GRAHAM. The report from the Interstate Commerce Commission which the chairman has here contains that exact language. That is what they suggest.

The CHAIRMAN. Is there anything else, Mr. Huddleston?

Mr. HUDDLESTON. Just one thing more. There is no reservation in this statute of any right to alter, amend, or otherwise deal with this?

Mr. FREEMAN. No; we just leave that open. If we have to, we would come back to Congress for another amendment.

Mr. HUDDLESTON. Do you think it is good policy for Congress to grant perpetual charters beyond its control?

Mr. FREEMAN. Well, a railroad charter now is not beyond the control of Congress, because through various boards and bureaus of the Government you regulate and control it in every way.

Mr. HUDDLESTON. Well, the vested interest that goes with the charter carries no such provision.

Mr. FREEMAN. Of course, if it is not beyond the reach of Congress we would have to come to Congress to get an amendment hereafter. If we desired any matter not already covered by amendment, we would have to come to Congress.

Mr. HUDDLESTON. In all the statutes that we are passing now of this nature, those reservations are carried, so far as I know.

Mr. RAYBURN. Mr. Huddleston, since the present Congress changed the banking law and gives banks the right to have a perpetual charter?

Mr. HUDDLESTON. I do know of something of that kind done that I very strenuously opposed, but even in passing the bridge bills and all other laws we reserve that right, and I am wondering whether we should not do the same thing here.

Mr. RAYBURN. Have we been putting that provision into anything except bridge bills? I do not remember it if we do. That is a general form made up by the committee for bridge bills, and that is the right to alter, amend, or repeal expressly reserved in all bridge bills, but in other general legislation I do not thing it is done. It is always presumed that Congress has the power anyhow.

Mr. HUDDLESTON. Congress so largely exercises the power of granting vested rights that it is pretty hard to say. Now, such a thing as our dam act, of course, has a recapture clause. Here we are letting a bird loose that we never can catch any more.

Mr. RAYBURN. Why do you say that?

Mr. HUDDLESTON. It is true that we did that in 1871 when we chartered this railroad company, but my feeling about it is that we ought to be very careful about doing that. There are practically no modern corporation laws in the

Digitized by Google

States that have corporation laws that charter corporations in perpetuity without the power to repeal.

Mr. RAYBURN. Isn't it always presumed that you have that power anyhow?

Mr. HUDDLESTON. Just the other day we had that question in regard to a college case.

Mr. RAYBURN. Couldn't Congress repeal the charter of this railroad now if it wanted to?

Mr. HUDDLESTON. No; it could not.

Mr. FREEMAN. It could if it failed to perform its functions—if the railroad failed to perform its functions.

Mr. HUDDLESTON. That is forfeiture, not repeal. It is forfeiture by a proceeding in court. Of course, Congress could declare forfeiture, but that would not make forfeiture if it had not occurred. That is a judicial question. You can not take away a franchise that has been granted to these people by act of Congress. That is vested in them forever, and any extensions we may grant to them will be granted without reservation, vested forever.

The CHAIRMAN. Are there any other questions to ask the witness? If not, the chairman would like to ask Mr. Freeman if he will kindly look at the bill on page 4, the last bill we are considering, page 4, line 8, and see if you think the comma after the word "directors" should be stricken out.

Mr. HUDDLESTON (reading). "By resolution of its board of directors, duly adopted at a meeting thereof, held in accordance with its by-laws." No; that is all right. I think that is correct. But I would like to have, in order to check that, the statement of the Interstate Commerce Commission.

The CHAIRMAN. Well, that is contrary to the suggestion of the Interstate Commerce Commission. Mr. Sumners evidently got his manuscript wrong.

Mr. FREEMAN. We do not care whether the comma is in there or not.

The CHAIRMAN. Now, then, coming to line 16 and following, the Interstate Commerce Commission would omit two commas in that line. That is on page 4.

Mr. FREEMAN (reading). "And preferences and be subject to such limitations and restrictions." The commas are out. They are not in the last act.

The CHAIRMAN. I am wrong about that; they should be in rather than out. Is that correct?

Mr. FREEMAN. Yes, sir.

The CHAIRMAN. Now, then, on page 5, line 3, the last word has been printed "practicable." The suggestion of the Interstate Commerce Commission is "applicable."

Mr. FREEMAN. Yes; "so far as applicable." The word "practicable" is wrong.

The CHAIRMAN. "Applicable" would meet your idea, would it not?

Mr. FREEMAN. Yes.

Mr. GRAHAM. Why have it at all, Mr. Chairman?

The CHAIRMAN. Well, that is another question.

Mr. GRAHAM. Why not make them just subject to the orders of the Interstate Commerce Commission?

The CHAIRMAN. The Interstate Commerce Commission advocated the expression "so far as applicable."

Mr. FREEMAN. "Applicable" is the word and it is in the redraft that I had made. In the Senate bill the word "applicable" is in there.

Mr. GRAHAM. Then, there would be a question arising all the time as to whether it was applicable or not.

The CHAIRMAN. Well, I suppose that is the reason why they left in, so they would have that question to decide.

Mr. GRAHAM. Do you, Judge, know any place where the ordinary law giving powers to the Interstate Commerce Commission would not be applicable to your roads?

Mr. FREEMAN. No, sir; we do not know of any; but they worded that section themselves. That is their language entirely. We did not originate that.

Mr. GRAHAM. I know they did.

Mr. RAYBURN. I suppose they did that out of an abundance of precaution, considering that this was a railroad federally chartered and was not on all fours with all others, in all probability, and they might put that in there as a blanket protection.

Mr. GRAHAM. I think that perhaps that is true; but, really, Mr. Rayburn, that is going to cause us trouble on the floor—it is apt to—that very language. They

Digitized by Google

may say, "Now, here is a special railroad with special powers, and the rules of the Interstate Commerce Commission are not entirely applicable to it."

Mr. FREEMAN. We do not object to striking it out.

Mr. GRAHAM. I believe your bill would be better if that were out.

Mr. DE GERSDORFF. We spoke to Mr. Esch about that.

The CHAIRMAN. Mr. Esch has already indicated in favor of having it here. But we will pass on to line 7. In line 7, after the word "issuance," the words "from time to time" have been suggested as being desirable in there, so that it will read "or any issuance from time to time."

Mr. FREEMAN. Did the Interstate Commerce Commission recommend that?

The CHAIRMAN. That was in your original bill.

Mr. FREEMAN. Yes; and the commission cut that out themselves.

The CHAIRMAN. And you offer no objection to that?

Mr. FREEMAN. No; not at all.

Mr. HAWES. Judge Freeman, referring again to section 7, this is simply another attempt to put your road on a parity with other roads?

Mr. FREEMAN. Absolutely.

Mr. HAWES. With equal rights and privileges, and not increase your rights and privileges?

Mr. FREEMAN. That is true.

Mr. HAWES. In other words, it simply brings this down so that you will be treated equally in State courts and Federal courts with other roads doing business in Louisiana and Texas?

Mr. FREEMAN. Yes, sir.

Mr. HAWES. It has no other object and will accomplish no other object?

Mr. FREEMAN. That is the only purpose.

Mr. RAYBURN. Mr. Lea has made a suggestion to me as to why the Interstate Commerce Commission uses the words "aforesaid act," in section 5. Section 5 reads as follows: "That all power and authority granted by this act, or by any of the aforesaid acts," which brings in something else entirely, don't you see?

Mr. FREEMAN. That refers to the old acts.

Mr. RAYBURN. Yes; I know.

Mr. LEA. "Aforesaid acts" brings in another set of powers entirely.

Mr. RAYBURN. It brings in another set of powers that probably we are not dealing with, and then they blanket all that in and say "granted by this act or by any of the aforesaid acts, shall be subject in its exercise to the provisions of the interstate commerce act, or any act amendatory thereof or supplemental thereto from time to time in force so far as applicable."

Mr. GRAHAM. Here is what I have in mind: Is it not a pretty good time now to not only give this road the full benefit of the rights that other roads have, which I think they ought to have, and at the same time make them subject to the same laws exactly, and what harm can be done by saying that in all these acts they are subject to the provisions of the interstate commerce act?

Mr. RAYBURN. I do not know whether we are saying that or not. I do not know whether—"or by any of the aforesaid acts"—I do not know whether in talking about some of the aforesaid acts the Interstate Commerce Commission might not have power with reference to some things that are in this railroad's charter or amendments thereto. I do not know. So far as I am concerned it could go out.

Mr. GRAHAM. I think it was an excess of caution on their part. Of course, I have no reason to know exactly what they thought aboht it, but they may have concluded that some place in some of these acts there were some special powers or provisions that were inconsistent with the general act, and they put this in in ordr to guard against anything of that kind. But from reading the two acts that have been submitted here, and from what the Judge says, I can not see any trouble about eliminating it.

Mr. FREEMAN. There are some detailed provisions in the old act. For instance, we file our mortgages and proceedings with the Department of the Interior and things of that kind—details that we deal with the department.

The CHAIRMAN. Would it be the part of safety to follow the commission?

Mr. GRAHAM. If the proponents of the bill want it that way I have no objection, but I can see where there might be trouble.

Mr. HUDDLESTON. I want to ask why that should be continued. Why should the Department of the Interior have anything more to do with this railroad than it has to do with any other railroad?

Digitized by Google

Mr. FREEMAN. That is a matter of filing our mortgage so as to make it a public record. One of the reasons they put that in there originally—I can see well enough it should have gone there originally. The Department of the Interior presupposed that we might get into California and get some land-grant rights, don't you understand, and they wanted to kind of keep a check and keep control over our land grants. There is no reason now why we should do it, but we do it as a matter of fact, as well as to record our mortgages, but we follow the ruling of the department.

Mr. HUDDLESTON. I see no reason, Mr. Chairman, why that should be in, that practice of this one road of all the roads in the United States filing certain papers with the Department of the Interior. It is useless machinery and of no real utility, so far as I can see.

Mr. FREEMAN. We file them there because our charter says we should.

The charter carried it because at that time there was no Interstate Commerce Commission and no supervision over these matters; but we do not confine it to that point; we do file in every State just as well as if we were any other road. We take no chances on not filing them in every State, but we always file it with the Department of the Interior.

The CHAIRMAN. Are there any further questions to be brought? If not, gentlemen, what is your pleasure with reference to further consideration of the bill?

Mr. DE GERSDORFF. Might I interrupt to say one word in regard to this question of recording papers with the Department of the Interior? That was, I think, intended in the original charter and is intended in this act merely to provide a method of perpetuating in a public record the corporate proceedings, either for the execution of a mortgage of for the increase of capital stock. In the case of a corporation organized under State law, the practice is almost universal to require those papers to be filed in the office of the secretary of that State where the corporation is organized.

Now we have got to have some substitute for that, so that we may point to a public record of what has been done to create our capital stock, our mortgage bonds, other than the mere copies of the resolutions of the board of directors and stockholders, which may at any time be lost. We want to make a public record of it. That is the only reason for that provision, and was, I think, the only provision in the original charter. If the Department of the Interior has not an appropriate place, make it anywhere else, as long as it is made a public record.

Mr. RAYBURN. Might I suggest, Mr. Chairman, that it would be a good thing for Mr. Freeman to file with his remarks a copy of the charter and amendments thereto. I think it would be enlightening to those who may want to follow the hearings.

The CHAIRMAN. Without objection Mr. Freeman will kindly hand those in to the clerk of the committee at an early date.

(The papers referred to follow:)

CHARTER OF THE TEXAS AND PACIFIC RAILWAY COMPANY.

AN ACT To incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That John C. Fremont, James L. Alcorn, G. M. Dodge, O. C. French, John D. Caldwell, J. J. Noah, A. C. Osborne, Timothy Hurley, C. C. Pool, Silas N. Martin, John M. Corse, George E. Wentworth, Philip H. Morgan, J. D. Cameron, Marshall O. Roberts, James L. Hodges, John Ray, W. Vermilye, Enoch L. Fancher, Charles F. Livermore, Joseph H. Oglesby, John Whytock, Daniel Drew, F. S. Davis, W. Orton, A. C. Babcock, Thomas A. Scott, Samuel D. Hoffman, H. Ramsdale, William H. Jackson, R. C. Parsons, Delos W. Emmons, M. A. Southworth, John H. Hall, G. C. Kinzey, W. P. Clark, James Dart, H. Jacobs, L. T. Smith, W. P. Dole, C. A. Weed, A. P. K. Safford, H. McCullough, Charles Jackson, Elisha Dyer, Alfred Anthony, James Hoy, W. M. Benjamin, H. D. Cooke, Joseph R. West, W. S. Huntington, J. M. Tebbets, C. C. Leondridge, D. D. Porter, M. Woodhull, Hiram Price, M. C. Hunter, W. T. Walters, J. B. Brownlow, T. A. Morris, Owen Tulter, J. H. Ledlie, R. M. Bishop, Samuel Craighead, D. N. Stanton, Augustus H. Whiting, G. L. Johnson, J. W. Goodland, Powell Clayton, Samuel Tate, W. Bolton, H. Robinson, George Maney, O. H. Bynum, M. Burns, J. C. Goodloe, E. G. Barney, Cyrus Busey, J. W. Forney, J. Lockwood, E. M. Davis, N. Patton, W. Flanegan, G. O'Brien,

Digitized by Google

G. P. Buel, G. H. Gidding, J. J. Newell, E. W. Rice, R. M. Shoemaker, Samuel Sloan, S. W. Morton, J. B. Bowman, L. M. Flournoy, J J. Hinds, G. R. Weeks, J. T. Ludling, B. C. Gilbert, B. D. Williams, Thomas Olcott, G. A. Fosdick, Harry Hays, P. S. Forbes, John T. Sprague, L. R. Marsh, A. W. Beckwith, J. C. Stanton, Cyrus H. Baldwin, A. J. Hamilton, Rush R. Sloan, Silas C. Colgrove, Samuel D. Jones, N. H. Decker, William N. Leet, B. F. Allen, J. B. Chaves, Augustus Kountze, John N. Goodwin, William S. Rosecrans, Michael Hahn, H. C. Warmouth, J. S. Williams, G. M. Spencer, L. J. Higbie, W. C. Kimball, and all such persons as shall or may be associated with them, and their successors, are hereby created a body politic and corporate in fact and in law, by the name, style, and title of the Texas Pacific Railroad Company, and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and use a common seal; and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, from a point at or near Marshall, county of Harrison, State of Texas; thence by the most direct and eligible route, to be determined by said company, near the thirty-second parallel of north latitude, to a point at or near El Paso; thence by the most direct and eligible route, to be selected by said company, through New Mexico and Arizona, to a point on the Rio Colorado, at or near the southeastern boundary of the State of California; thence by the most direct and eligible route to San Diego, California, to ship's channel, in the bay of San Diego, in the State of California, pursuing in the location thereof, as near as may be, the thirty-second parallel of north latitude, and is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the purposes of this act.

SEC. 2. That the persons named in the first section of this act shall constitute a board of commissioners (twenty of whom shall constitute a quorum for the transaction of business), to be known as the Texas Pacific Railroad Commissioners, who shall meet in the city of New York within ninety days after the passage of this act, at a time to be designated in a notice to be signed by the person first named in the list of corporators and six of his associates, and to be published for two weeks in at least one daily paper in New York, New Orleans, and Washington; and, when so met, they may cause books to be opened for the subscription of the capital stock of said company, and when twenty thousand shares, amounting to two millions of dollars, shall have been subscribed, and ten per centum actually paid thereon, in money, to the treasurer to be elected by said commissioners, who shall give bond for its safe keeping and payment to the treasurer of the company when organized, then it shall be lawful for such subscribers or stockholders, or a majority thereof, to organize said company in accordance with the provisions of this act, and to elect not less than seven nor more than seventeen directors, a majority of whom shall be necessary to the transaction of business, and who shall hold their offices for one year, and until their successors shall be elected and qualified; and the said directors shall immediately proceed to elect a president, vice president, secretary, and treasurer; the president and vice president shall be directors. At all elections for directors each share of stock shall be entitled to one vote, which may be given by the holders in person, or by proxy, who shall also be a shareholder. The directors shall hold their offices for any term not exceeding three years, as may be provided in the by-laws; and the annual meeting of stockholders shall take place as provided for in said by-laws.

SEC. 3. That the capital stock of the Texas Pacific Railroad Company shall be fixed by the board of directors, at a sum not exceeding fifty millions of dollars, in shares of one hundred dollars; and when the amount is so fixed it shall never be increased except by consent of Congress. Assessments upon said stock shall only be made by a majority vote of the whole number of directors at a regular meeting, which said assessments shall be paid at the expiration of thirty days after a notice given in one newspaper in each of the cities of Washington, Philadelphia, New York, and New Orleans.

SEC. 4. That the said Texas Pacific Railroad Company shall have power and lawful authority to purchase the stock, land grants, franchises, and appurtenances of and consolidate on such terms as may be agreed upon between the parties with any railroad company or companies heretofore chartered by congressional, State, or Territorial authority, on the route prescribed in the first section of this act; but no such consolidation shall be with any competing through line of railroads to the Pacific Ocean.

Digitized by Google

SEC. 5. That the said company shall have power and authority to make running arrangements with any railroad company or companies heretofore chartered or that may hereafter be chartered by congressional, State, or Territorial authority; also to purchase lands, or accept donations, or grant of lands, or other property from States or individuals for the purpose of aiding in carrying out the object of this company.

SEC. 6. That the rights, lands, land grants, franchises, privileges and appurtenances, and property of every description belonging to each of the consolidated or purchased railroad company or companies, as herein provided, shall vest in and become absolutely the property of the Texas Pacific Railroad Company: *Provided*, That in all contracts made and entered into by said company with any and all other railroad company or companies to perfect such aforesaid consolidation or purchase, the indebtedness or other legal obligation of such company or companies shall be assumed by the said Texas Pacific Railroad Company as may be agreed upon, and no such consolidation or purchase shall impair any lien which may exist on any of the railroads so consolidated or purchased; but said company shall not assume the debts or obligations of any company with which it may consolidate or purchase as aforesaid to an amount greater than the cash value of the assets received from the same.

SEC. 7. That the said Texas Pacific Railroad Company shall have power to make and enforce rules and by-laws for the election of its officers and the government and management of the business of the company, and to do and perform all needful and proper things to be done and performed to promote the objects of the company hereby incorporated not inconsistent with the laws of the United States and the provisions of this charter.

SEC. 8. That the right of way through the public lands be, and the same is hereby, granted to the said company for the construction of the said railroad and telegraph line, and the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof. Said right of way is granted to sail company to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands; and there is also hereby granted to said company grounds for stations, buildings, workshops, wharves, switches, sidetracks, turntables, water stations, and such other structures as may be necessary for said railroad, not exceeding forty acres of land at any one point.

SEC. 9. That for the purpose of aiding in the construction of the railroad and telegraph line herein provided for, there is hereby granted to the said Texas Pacific Railroad Company, its successors and assigns, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as such line may be adopted by said company, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad in California, where the same shall not have been sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim may not have attached at the time the line of said road is definitely fixed. In case any of said lands shall have been sold, reserved, occupied, or preempted, or otherwise disposed of, other lands shall be selected in lieu thereof by said company, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections first above named, and not including the reserved numbers. If, in the too near approach of the said railroad line to the boundary of Mexico, the number of sections of land to which the company is entitled can not be selected immediately on the line of said railroad, or in lieu of mineral lands excluded from this grant, a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest the line of said railroad may be selected as above provided; and the word "mineral" where it occurs in this act shall not be held to include iron or coal: *Provided, however*, That no public lands are hereby granted within the State of California further than twenty miles on each side of said road except to make up deficiencies as aforesaid, and then not to exceed twenty miles from the lands originally granted. The term "ship's canal" as used in this bill shall not be construed as conveying any greater right to said company to the water front of San Diego Bay than it may acquire by gift, grant, purchase, or otherwise, except the right of way as herein granted: *And provided further*, That all such lands so granted by this section to said company which shall not be sold or otherwise disposed of as provided in this act within three years after the completion of the entire road,

Digitized by Google

shall be subject to settlement and preemption like other lands, at a price to be fixed by and paid to said company, not exceeding an average of two dollars and fifty cents per acre for all the lands herein granted.

SEC. 10. That when the route of said railroad and telegraph lines shall pass through the lands of private persons, or where it may be necessary for said railroad company to take any lands belonging to private persons for any of the purposes herein mentioned, necessary to said road, such right of way through, or title to such lands, shall be secured in accordance with the laws of the State or Territory in which they may be situated.

SEC. 11. That the Texas Pacific Railroad Company shall have power and authority to issue two kinds of bonds, secured by mortgage, namely: First, construction bonds; second, land bonds. Construction bonds shall be secured by mortgage, first on all or any portion of the franchises, roadbed, or track of said railroad, and all the appurtenances thereto belonging when constructed or in the course of construction, from a point at or near Marshall, to ship's channel, in the bay of San Diego, in the State of California, as aforesaid. Land bonds shall be secured by mortgage, first, on all or any portion of the lands hereby granted in aid of the construction of said railroad as is provided for in this act; second, on lands acquired by any arrangement or purchase or terms of consolidation with any railroad company or companies to whom grants of land may have been made, or may hereafter be made by any congressional, State, or Territorial authority, or who may have purchased the same previous to any such arrangement or consolidation: *Provided*, That all the mortgages made and executed by said railroad company shall be filed and recorded in the Department of the Interior, which shall be sufficient evidence of their legal execution, and shall confer all the rights and property of said company as therein expressed: *And provided also*, That the proceeds of the sales of the aforesaid construction and land bonds shall be applied only in the construction, operation, and equipment of the contemplated railroad line: *And provided further*, That said mortgage shall in no wise impair or affect any lien existing on the property of said company or companies at or before the time of such consolidation.

SEC. 12. That whenever the said company shall complete the first and each succeeding section of twenty consecutive miles of said railroad, and put it in running order as a first-class road in all its appointments, it shall be the duty of the Secretary of the Interior to cause patents to be issued conveying to said company the number of sections of land opposite to and coterminous with said completed road to which it shall be entitled for each section so completed. Said company, within two years after the passage of this act, shall designate the general route of its said road as near as may be, and shall file a map of the same in the Department of the Interior; and when the map is so filed, the Secretary of the Interior, immediately thereafter, shall cause the lands within forty miles on each side of said designated route within the Territories, and twenty miles within the State of California, to be withdrawn from preemption, private entry, and sale: *Provided, however*, That the provisions of the act of September, eighteen hundred and forty-one, granting preemption rights, and the acts amendatory thereof and of the acts entitled "An act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, and the amendments thereto, shall be and the same are hereby extended to all other lands of the United States on the line of said road when surveyed, except those hereby granted to said company.

SEC. 13. That the president of the company shall annually, by the first day of July, make a report and file it with the Secretary of the Interior, which report shall be under oath, exhibiting the financial situation of the company, the amount of money received and expended, and the number of miles of road constructed each year, and further, the names and residences of the stockholders, of the directors, and of all other officers of the company, the amount of stock subscribed, and the amount thereof actually paid in, a description of the lines of road surveyed and fixed upon for construction, the amount received from passengers and for freight, respectively, on the road, a statement of expenses of said road and its fixtures, and a true statement of the indebtedness of said company and the various kinds thereof.

SEC. 14. That the certificates of the capital stock must be signed by the president and secretary, and attested by the seal of the company, and shall contain an extract from the proceedings of the board of directors fixing the amount thereof, as well as from this act, authorizing such issue. All the bonds and mortgages issued by the said company must be signed by the president and

Digitized by Google

secretary, and attested by the seal of said company, and shall contain an extract from the law authorizing them to be issued. The face value of said bonds shall be one thousand dollars in gold, and shall be redeemable at such times, and to bear such rate of interest, payable semiannually in gold, as may be determined by the directors. The total value of the construction bonds to be issued shall not exceed thirty thousand dollars per mile of said railroad, and the total face value of the land bands shall not exceed two dollars and fifty cents per acre for all lands mortgaged; the total amount of each to be determined by the board of directors.

SEC. 15. That all railroads constructed, or that may be hereafter constructed, to intersect said Texas Pacific Railroad, shall have a right to connect with that line; that no discrimination as regards charges for freight or passengers, or in any other matter, shall be made by said Texas Pacific Railroad Company against any of the said connecting roads; but that the same charges per mile as to passengers, and per ton per mile as to freight, passing from the said Texas Pacific Railroad over any of said connecting roads, or passing from any of said connecting roads over any part of said Texas Pacific Railroad, shall be made by said company as they make for freight and passengers over their own roads: *Provided also*, That said connecting roads shall reciprocate said right of connection and equality of charges with said Texas Pacific Railroad: *And provided further*, That the rates charged for carrying passengers and freight per mile shall not exceed the prices which may be fixed by Congress for carrying passengers and freight on the Union Pacific and Central Pacific Railroads.

SEC. 16. That said road shall be constructed of iron or steel rails manufactured from American ore, except such as may have heretofore been contracted for by any railroad company which may be purchased or consolidated with by the company hereby incorporated, as provided by this act.

SEC. 17. That the said Texas Pacific Railroad Company shall commence the construction of its road simultaneously at San Diego in the State of California, and from a point at or near Marshall, Texas, as hereinbefore described, and so prosecute the same as to have at least fifty consecutive miles of railroad from each of said points complete and in running order within two years after the passage of this act; and to so continue to construct each year thereafter a sufficient number of miles to secure the completion of the whole line from the aforesaid point on the eastern boundary of the State of Texas to the Bay of San Diego, in the State of California, as aforesaid, within ten years after the passage of this act; and upon failure to so complete it Congress may adopt such measures as it may deem necessary and proper to secure its speedy completion.

SEC. 18. That the President of the United States, upon the completion of the first section of twenty miles, shall appoint one commissioner, whose duty it shall be to examine the various sections of twenty miles as they shall be completed, and report thereon to him in writing; and if from such report he be satisfied that said company has fully completed each section of its road, as in this act provided, he shall direct the Secretary of the Interior to issue patents to said company for the lands it is entitled to under this act, as fast as each section of said road is completed.

SEC. 19. That the Texas Pacific Railroad Company shall be and it is hereby declared to be a military and post road; and for the purpose of insuring the carrying of mails, troops, munitions of war, supplies, and stores of the United States, no act of the company, nor any law of any State or Territory shall impede, delay, or prevent the said company from performing its obligations to the United States in that regard: *Provided*, That said road shall be subject to the use of the United States for postal, military, and all other governmental services, at fair and reasonable rates of compensation, not to exceed the price paid by private parties for the same kind of service, and the Government shall at all times have the preference in the use of the same for the purpose aforesaid.

SEC. 20. That it shall not be lawful for any of the directors, either in their individual capacity or as members of an incorporated or joint stock company, to make any contracts or agreements with the said Texas Pacific Railroad Company for the construction, equipment, or running of its road, or to have any interest therein; and all such contracts or agreements are hereby declared null and void, and all money or property received under such contracts or agreements may be recovered back for the benefit of the company by any stockholder.

SEC. 21. That any railroad company whose route lies across the route of the Texas Pacific Railroad may cross the same, and for the purpose of crossing

Digitized by Google

shall have the right to require at double minimum price all lands, whether of the United States or granted by this act, which shall be needed for a right of way two hundred feet wide through said lands, and for depots, stations, side-tracks, and other needful purposes, not exceeding for such purposes forty acres at any one station.

SEC. 22. That the New Orleans, Baton Rouge, and Vicksburg Railroad Company, chartered by the State of Louisiana, shall have right to connect, by the most eligible route to be selected by said company, with the said Texas Pacific Railroad at its eastern terminus, and shall have the right of way through the public land to the same extent granted hereby to the said Texas Pacific Railroad Company; and in aid of its construction from New Orleans to Baton Rouge, thence by the way of Alexandria, in said State, to connect with the said Texas Pacific Railroad Company at its eastern terminus, there is hereby granted to said company, its successors, and assigns the same number of alternate sections of public lands per mile, in the State of Louisiana, as are by this act granted in the State of California to said Texas Pacific Railroad Company; the said lands shall be withdrawn from market, selected, and patents issued therefor, and opened for settlement and preemption, upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company, within said State of California: *Provided*, That said company shall complete the whole of said road within five years from the passage of this act.

SEC. 23. That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachap Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to the said Southern Pacific Railroad Company of California, by the act of July twenty-seven, eighteen hundred and sixty-six; *Provided, however*, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company.

Approved March 3, 1871.

(Chap. CXXII, 41st Cong., sess. III, vol. 16, U. S. Stat. L., p. 573.)

AN ACT Supplementary to an act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the name, style, and title of the Texas Pacific Railroad Company shall hereafter be "The Texas and Pacific Railway Company"; and the said the Texas and Pacific Railway Company shall have, possess, and enjoy all rights, privileges, and franchises heretofore conferred upon the said Texas Pacific Railroad Company.

SEC. 2. That the said the Texas and Pacific Railway Company shall have power and authority to issue the construction and land bonds authorized by the eleventh section of said act of incorporation, for such amounts, not exceeding forty thousand dollars per mile of said road, of construction bonds, as said company may deem needful to provide for the construction and equipment of its line, and to include in the mortgage or mortgages to secure said construction bonds all or any portion of the lands granted in aid of the construction of said railroad; and in the mortgage or mortgages to secure said land bonds, any portion of said lands not so used to secure the construction bonds aforesaid; and all or any portion of the lands acquired by the terms of consolidation lawfully authorized by the fourth section of said act March third, eighteen hundred and seventy-one, with any railroad company or companies to whom grants of land may have been made, or may hereafter be made, by any congressional, State, or Territorial authority, or who may have purchased the same previous to any such arrangement or consolidation, and within the time limited for the completion of the road, and all such lands of every descrip-

Digitized by Google

tino shall be subject to all limitations and conditions now by law existing in relation thereto and as modified by this act; and this act shall not be construed to revive, enlarge, extend or create any land grant whatever, beyond that heretofore granted by Congress, and which shall duly inure to said company upon compliance with the terms of this act in relation to the times fixed for completion of said railway, and all such mortgages shall be subject to all the conditions and limitations by law existing under this act and the acts to which it is supplementary in respect to such lands, and shall not be held to vest any title in the mortgage or create any lien on such lands, other than such company is or may become lawfully entitled to vest or create thereunder; but the amount of said land bonds shall not exceed two and a half dollars per acre for all lands covered by the mortgage or mortgages securing the same.

SEC. 3. That all the mortgages made and executed by said railroad company shall be filed and recorded in the Department of the Interior, which shall be a sufficient evidence of their legal execution: *Provided*, That the aforesaid bonds and the authorized capital stock, or the proceeds thereof, shall be applied only for the purpose of securing the construction, operation, and equipment of the contemplated railroad line, under lawful contracts with such parties, and on such terms and conditions as said company may deem needful, and for the further purpose of purchase, consolidation, completion, equipment, and operating of the other roads, as contemplated by said act and specified therein, being a part of the aforesaid railroad line, and for the expenses necessary and incident to the works authorized thereby: *Provided, however*, That said road and its equipment shall be of the standard heretofore required by the United States Government for the existing Pacific Railway lines: *And provided further*, That said mortgage or mortgages shall in no wise impair or affect any lien existing on the property of said company or companies at or before the time of such consolidation.

SEC. 4. That said road shall be constructed of iron or steel rails manufactured from American ore, except such as may have been contracted for before consolidation by any railroad company which may be purchased by, or consolidated with, this company.

SEC. 5. That the said Texas and Pacific Railway Company shall commence the construction of its road at or near Marshall, Texas, and proceed with its construction, under the original act and this supplement, or in pursuance of the authority derived from any consolidation as aforesaid, westerly from a point near Marshall, and towards San Diego, in the State of California, on the line authorized by the original act, and so prosecute the same as to have at least one hundred consecutive miles of railroad from said point complete and in running order within two years after the passage of this act; and so continue to construct, each year thereafter, a sufficient number of miles, not less than one hundred, to secure the completion of the whole line, from the aforesaid point on the eastern boundary of the State of Texas to the bay of San Diego, in the State of California, as aforesaid, within ten years after the passage of this act; and said road from Marshall, Texas, throughout the length thereof, shall be of uniform gauge: *Provided, however*, That the said company shall commence the construction of said road from San Diego eastward within one year from the passage of this act, and construct not less than ten miles before the expiration of the second year, and after the second year not less than twenty-five miles per annum in continuous line thereafter between San Diego and the Colorado River until the junction is formed with the line from the east at the latter point or east thereof; and upon failure to so complete it, Congress may adopt such measures as it may deem neecssary and proper to secure its speedy completion; and it shall also be lawful for said company to commence and prosecute the construction of its line from any other point or points on its line; but nothing in this act contained shall be so construed as to authorize the grant of any additional lands or subsidy, of any nature or kind whatsoever, on the part of the Government of the United States: *Provided*, That said Texas and Pacific Railway Company shall be, and it is hereby authorized and required to construct, maintain, control, and operate a road between Marshall, Texas, and Shreveport, Louisiana, or control and operate any existing road between said points, of the same gauge as the said Texas & Pacific Railroad; and that all roads terminating at Shreveport shall have the right to make the same running connections, and shall be entitled to the same privileges, for the transaction of business in connection with the said Texas and Pacific Railway as are granted to roads intersecting therewith: *Provided further*, That nothing

Digitized by Google

herein shall be construed as changing the terminus of said Texas and Pacific Railway from Marshall, as provided in the original act.

SEC. 6. That all acts or parts of acts inconsistent with this supplement be and the same are hereby repealed.

Approved May 2, 1872.

(Chap. CXXXII, 42d Cong., sess. II, vol. 17, U. S. S. L., p. 59.)

AN ACT Supplemental to an act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the face value of all bonds hereafter issued by the Texas and Pacific Railroad Company, under the provisions of an act approved March 3, 1871, shall at the option of the company, be either in gold or other lawful money of the United States, bearing interest, at like option of the company, either in gold or other lawful money of the United States; and any mortgage heretofore executed by said company, securing bonds payable in any lawful money of the United States, other than gold, and the bonds recited therein, and to secure which said mortgage was given, are hereby legalized, and said mortgage and bonds shall have the same effect as though they had been authorized by the act to which this is a supplement: *Provided*, That in all other respects the requirements of that law in regard to such mortgage and bonds have been fully complied with.

Approved March 3d, 1873.

(Chap. CCLVII, 42d Cong., sess. III, vol. 17, U. S. S. L., p. 598.)

AN ACT Supplementary to the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Texas and Pacific Railway Company is hereby empowered to secure, by one or more mortgages upon the whole or any portion of its line, the construction bonds heretofore authorized to be issued, and to cancel the mortgage now on record with the Secretary of the Interior, so far as the same can be done without prejudice to existing rights, and to substitute therefor the mortgage or mortgages hereby authorized, which substituted mortgages shall expressly reserve all rights which may have been acquired under the existing mortgage: *Provided*, That the aggregate of the said bonds to be issued under and secured by said mortgage or mortgages shall not exceed the limit heretofore fixed by Congress; and said mortgages for the division east of Fort Worth shall embrace the roads and property of the Southern Pacific Railroad Company and of the Southern Transcontinental Railway Company, heretofore merged in and consolidated with the said Texas and Pacific Railway Company, under the authority and requirements of the laws of the State of Texas, and which roads, so merged as aforesaid, shall, for that and all other purposes, be deemed and taken to be a part of the said Texas and Pacific Railway, and shall hereafter be subject to all the provisions and limitations of the act of Congress incorporating said company, and of the supplements thereto: *And provided further*, That nothing in this act shall be construed or have the effect to entitle said corporation to any other or further rights to public lands, or in any other respect as against the United States, than such as by law it is now entitled to.

Approved June 22d, 1874.

(Chap. 406, 43d Cong., sess. I, vol. 18, U. S. S. L., 197.)

THE TEXAS & PACIFIC RAILWAY CO. OUTLINE OF PURPOSES OF PROPOSED CHARTER AMENDMENT.

The Texas & Pacific Railway Co. owns a property of great intrinsic value, having a mileage of about 1,850 miles, extending from New Orleans to El Paso. It is operating under a Federal charter, which can be amended only by act of Congress. It enjoys an especially favorable geographical position and serves a rich and growing territory. It ought to be strong and prosperous

Digitized by Google

and capable of giving adequate facilities to and greatly aiding in the development of the territory which it serves.

That for years the company has been in poor credit and since 1916 has been in the hands of receivers is due to radical defects in its financial structure. That structure is such that the company has been unable to create any marketable security with which to raise the moneys for improvements, betterments, and additions imperatively required to enable it to keep abreast of the times, operate its property economically, and develop its full earning capacity. The mortgages resting upon its lines are closed. Its aggregate mortgage indebtedness, including its second-mortgage income bonds, is approximately $55,600,000. Manifestly bonds ranking behind so large a prior lien would not be marketable at a satisfactory price.

The result is that, although for upward of 12 years the company has not paid interest upon its second-mortgage income bonds and has applied to betterments practically its entire net income over and above the interest upon the mortgage obligations ranking prior to those bonds, the property is not in satisfactory physical condition, and its earning capacity and ability to operate economically and serve the public are suffering accordingly. The company also has outstanding a judgment for approximately $4,500,000, recovered on certain unsecured notes.

The following plan of readjustment makes provision for meeting the difficulties above stated:

(*a*) Provision for improvements, additions, and betterments is to be made, if and when authorized by the Interstate Commerce Commission, by the creation of an issue of new bonds, to be known as general and refunding mortgage bonds secured by a new mortgage subordinate only to the existing first-mortgage and branch-line bonds, aggregating approximately $30,000,000. These new bonds should be a safe and marketable security, as the aggregate amount of prior liens upon the completion of the readjustment will be at the rate of less than $17,000 per mile.

(*b*) The second-mortgage income bondholders are willing to receive on surrender of their bonds 5 per cent noncumulative preferred stock equal at par to the full amount of said bonds whenever the issuance of such stock is authorized by the Interstate Commerce Commission.

(*c*) The judgment recovered upon the unsecured notes is to be funded into obligations of the company junior to the new general and refunding mortgage bonds, as may be authorized by the Interstate Commerce Commission.

The proposed plan, if the bill is passed, will not increase the total outstanding securities, but will change the form from lien bonds of $25,000,000 to preferred stock of like amount; and, in addition thereto, will permit, but only when and as authorized by the Interstate Commerce Commission, the issuance of bonds for badly needed improvements, betterments, equipment, and extensions, a privilege which all other railroads now enjoy under the terms of the transportation act.

If the proposed amendment to the charter is obtained and the plan herein referred to is carried out the company will be put in a position to provide adequately for its capital requirements, the amount of its total capitalization, including stock and bonds, will not be increased, and its common stockholders will be enabled to retain their stock, without assessment.

The plan under consideration contemplates an adjustment through the voluntary action of security holders without the enforcement of any existing mortgages or other liens.

The readjustment will effect a reduction of $25,000,000 in the aggregate mortgage debt now resting upon the property by the surrender of the outstanding second mortgage income bonds and the issue in lieu thereof of a like par amount of 5 per cent noncumulative preferred stock. The cancellation of the mortgage securing the second mortgage income bonds should give the company ample borrowing power for the purpose of meeting its future capital requirements. The total capitalization, including bonded debt, of the company will not be increased and the existing common stock will not be disturbed and will not be called upon by assessment or otherwise to meet any part of the cost of readjustment.

(Whereupon, at 12.10 o'clock p. m., the committee went into executive session.)

×

Digitized by Google

This book should be returned to the Library on or before the last date stamped below.

A fine of five cents a day is incurred by retaining it beyond the specified time.

Please return promptly.

BAKER
HB 5

U. S. Congress.
Committee on Int
and Foreign Comm
The Texas & P
Railway Co. Char
Hearing

Digitized by Google

Digitized by Google